

## ARTICLE 19 response to the ICANN STRATEGIC PLAN FOR PUBLIC TECHNICAL IDENTIFIERS (PTI) (FY21-24)

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### Introduction

ARTICLE 19 welcomes the efforts of the Public Technical Identifiers (PTI) to engage in a multi-stakeholder process by holding this [Public Consultation](#)<sup>1</sup> on the first dedicated Strategic Plan FY21-24 for Public Technical Identifiers (PTI)<sup>2</sup>.

The consultation is very important for us as it defines PTI's strategy in delivering the IANA functions and represents a subset of the ICANN organization's strategy. This is in order to align with ICANN's new Strategic Plan beginning FY21.

We thus appreciate the opportunity to provide PTI with our position on the draft Strategic Plan FY 21 - 24 and we look forward to the discussions that will follow.

### About ARTICLE 19

ARTICLE 19 is an international human rights organisation that works to protect and promote free expression, which includes the right to speak, freedom of the press and the right to access information. With regional programmes in Africa, Asia, Europe, Latin America and the Middle East and North Africa, we champion freedom of expression at the national, regional and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance.

At ICANN, we engage through the ICANN Empowered Community as members of the Generic Names Supporting Organization under the Non-commercial Users Constituency (NCUC) and as members of the At-Large Advisory Committee (ALAC) directly as part of the European Regional At-Large Organization (EURALO). We work within the ICANN community with the main purpose of raising awareness and coalition building within the community about how the Domain Name System (DNS) affects human rights. This aim would ensure that Section 27.2 of ICANN Bylaws (on Human Rights) and other Bylaws

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1 ICANN Public Comments on Draft PTI FY21-24 Strategic Plan <<https://www.icann.org/public-comments/draft-pti-fy21-24-strategic-plan-2020-04-20-en>> accessed May 27, 2020

2 Draft PTI FY21-24 Strategic Plan <<https://www.icann.org/en/system/files/files/draft-pti-fy21-24-strategic-plan-16apr20-en.pdf>> accessed May 27, 2020

with an impact on Human Rights are implemented in full and put the user at the centre of policy development processes.

## Summary

In May 2020, ARTICLE 19 reviewed the Strategic Plan For Public Technical Identifiers (Pti) (FY21-24).

Our analysis shows that the draft contains some positive provisions, but overall is quite vague in the risks section as some of the risks are not clearly linked to PTI's mandate. It envisages PTI to support ICANN org on its governance efforts to sustain and improve openness, inclusivity, accountability, and transparency. The drafting as is necessitates PTI to look into its operations for various human rights concerns and address them in line with the ICANN Mission and revised Bylaws.

In the analysis we recognise that PTI as an organization was constituted in 2016, the result of the IANA Stewardship Transition process that created a new not-for-profit organization to operate the IANA functions under contract with ICANN.

We recognise that the Internet is a global resource which should be managed in the public interest and appreciate the unequivocally important role which PTI has to play.

However, for PTI to be effective in its operations it needs to take into consideration the recent Workstream2 Recommendations especially those on Human Rights. Our submission recognises this fact and that the Internet is a global resource which should be managed in the public interest and appreciate the unequivocally important role which PTI has to play.

We assess the proposed four year strategic plan especially on its five key drivers: Trust, Security, Service Delivery, Operational Excellence and Governance - as against human rights and make specific recommendations under each section.

ARTICLE 19 urges the PTI Board to consider the recommendations below, which would help align the Draft Strategic Plan more closely with international law and best practice.

### **Strategic Objective 1:- Maintain stakeholders' trust that IANA is the proper home for enabling global interoperability through unique identifier coordination**

ARTICLE 19 welcomes PTI's initiative and commitment to working closely with the wider ICANN Org and partners including IETF Leadership, RIRs, CSC, and SO/ACs, as well as with the broader Internet community that uses the IANA services. We agree that it is

important to build on the current structural reform towards facilitating greater multi stakeholder participation especially in light of the 2016 IANA functions transition from unilateral U.S. government control to the global community.

To this aim, ARTICLE 19 calls for clarity on the second risk listed under this Strategic Objective, “*The evolving data privacy regulation landscape may have impacts on the level of transparency for the IANA registries, which may erode trust and accountability.*” We find this risk as drafted is very vague and needs to be redefined with more clarity on how it applies to PTI’s operations.

This is the case especially given registries and registrars are more directly responsible for registrant data and their failure to comply would make them directly liable for breach with no clear liability from PTI. This liability would be remedied via various national laws where the registries and registrars operate in and through the contract with ICANN.

Additionally, ARTICLE 19 would like to submit that in 2016 ICANN Board made the [commitment](#)<sup>3</sup> to respect and incorporate human rights considerations into its work, the organization and community led processes. This commitment was followed by the [November 2019 ICANN Board resolution](#)<sup>4</sup> adopting Workstream2 Recommendations including a framework of interpretation of Human Rights. Consequently, PTI as an ICANN partner carries the responsibility to factor human rights considerations into its work and to have the community-vetted view of these issues as part of the inputs in front of the PTI Board.

Importantly, with regard to privacy and data protection, while the plan identifies this subject as a risk with the potential to erode trust and accountability, we posit that it is actually the reverse.

We submit that this is the case especially as ICANN Community is currently engaged in an Expedited Policy Development Process (EPDP) aimed at developing a Policy position that ensures that ICANN Is compliant with the [European Union's General Data Protection Regulation](#)<sup>5</sup> (GDPR) and other relevant privacy and data protection laws.

3 ARTICLE 19, February 4, 2016. ICANN Board agrees to human rights commitment <<https://www.article19.org/resources/icann-board-agrees-to-human-rights-commitment/>> accessed May 27, 2020

4 ARTICLE19, December 16, 2019. ICANN takes one step forward in its human rights and accountability commitments <<https://www.article19.org/resources/blog-icann-takes-one-step-forward-in-its-human-rights-and-accountability-commitments/>> accessed May 27, 2020

5 ARTICLE19, November 23, 2016. Is the EU forgetting Freedom of Expression? The EU General Data Protection Regulation <<https://www.article19.org/resources/is-the-eu-forgetting-freedom-of-expression->

At ARTICLE19, we believe that data protection is essential to ensure that individuals are involved in decisions concerning their personal data and to ensure that companies such as PTI and its customers including Registries and Registrars that may gather and record personal data are transparent about the data they hold; follow fair and lawful processes on the collection, use, retention and maintenance of security of that data; and ensure that personal data collected for one purpose is not used for another.

In line with recent developments such as the European Union (EU) General Data Protection Regulation (GDPR), the protection of users' data and personally identifiable information must continue to be of paramount consideration not only as it flows from one point in the network to another, but also as it is processed and stored by Registries and Registrars (who are PTI's customers).

Lastly, pursuant to Principle 15 of the [Global Principles on Protection of Freedom of Expression and Privacy](#)<sup>6</sup>, on the Protection of publicly available information, Registries and Registrars (who are PTI's customers) have an obligation to make privacy protections clear and easily understandable and ensure that individuals are given adequate control over the information they want to make public and the information they want to keep private or limited to a defined group online.

**Strategic Objective 2:- Monitor and adapt to security threats and ensure resilient and secure IANA operations.**

ARTICLE 19 welcomes this objective. Further to the intention to meet evolving audit requirements both in its routine request processing role and as the party responsible for Key Signing Key ceremonies, we recommend that PTI consider incorporating Human Rights Impact Assessments as part of its audit and assessment.

A [Human Rights Impact Assessment \(HRIA\)](#)<sup>7</sup> is a process to identify and prioritize the impacts an organization has on human rights, to analyze how effectively these impacts are managed by the organization and to develop actions for improvement.

This process will ensure that all the new technologies deployed by PTI to achieve this objective and all PTI operations are properly weighted against Human Rights concerns

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[the-eu-general-data-protection-regulation/](#)> accessed May 27, 2020

6 The Global Principles on Protection of Freedom of Expression and Privacy  
<<http://article19.shorthand.com/>> accessed May 27, 2020

7 ARTICLE19, December 20, 2017. Assessing the human rights impacts of Internet registries <<https://www.article19.org/resources/assessing-human-rights-impacts-internet-registries/>> accessed May 27, 2020

such as the right to privacy and freedom of expression of the registrants and other internet users.

**Strategic Objective 3:- Continue to drive the implementation of operational initiatives to enhance the delivery of services based on the needs of the IANA customer. and Strategic Objective 4:- Monitor the delivery and performance of the IANA functions to achieve operational excellence.**

We welcome the objective as they are user (customer) centred. We also welcome the targeted outcome 4 under Objective 4, “*Evolve audit practices by continuing to ensure that our key processes and systems are independently verifiable and evaluating opportunities to promote increased confidence through expansion of audit scope and evaluation of alternative audit framework*”

We thus point out that in undertaking regular qualitative and quantitative analysis and review of business processes and service delivery including through third-party audits as outlined in section 4.1, an innovative method would include our aforementioned proposal under Strategic Objective 2. This is to incorporate human rights impact assessment as a method to monitor the delivery and performance of the IANA functions to achieve operational excellence.

Lastly, PTI identifies resources as a risk to properly achieve these objectives and we would thus recommend that PTI raises this risk to the ICANN Org Community especially in the context of the current discussion on the following key documents:

- [FY20 Operating Plan and Budget<sup>8</sup>](#)
- [FY21-25 Five Year ICANN Operating and Financial Plan<sup>9</sup>](#)
- [FY21 ICANN Operating Plan<sup>10</sup>](#)
- [FY21 ICANN Budget<sup>11</sup>](#)

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8 ICANN May 3, 2019. Internet Corporation for Assigned Names and Numbers (ICANN) Adopted FY20 Operating Plan & Budget Introduction and Highlights  
<<https://www.icann.org/en/system/files/files/adopted-opplan-budget-intro-highlights-fy20-03may19-en.pdf>> accessed May 27, 2020

9 ICANN OPERATING & FINANCIAL PLANS for FY21-25 (Five-Year) and FY21 (One-Year)  
<<https://www.icann.org/en/system/files/files/adopted-op-financial-plan-fy21-25-opplan-fy21-07may20-en.pdf>> accessed May 27, 2020

10 ICANN FY21 Operating Plan and Budget <<https://www.icann.org/en/ec/fy21-operating-plan-and-budget>> accessed May 27, 2020

**Strategic Objective 5:- Support ICANN org on its governance efforts to sustain and improve openness, inclusivity, accountability, and transparency.**

We welcome PTI's commitment to supporting the various review processes conducted by the ICANN Community that pertain to the IANA function.

Additionally, we welcome PTI's commitment to changes to the intellectual property agreement and oversight documents that allow for clear communication and improved transparency.

In light of achieving this objective, it is important that PTI engages in similar reform to its bylaws to incorporate human rights in a process similar to the ICANN process that was carried out by ICANN In 2016. This ICANN "Human Rights Core Value" specified that ICANN's decisions and actions should be guided by "respecting internationally recognized human rights as required by applicable law," within the scope of its Mission and other Core Values.

The ICANN Board [resolved<sup>12</sup>](#) to adopt each of the consensus recommendations contained within the [Work Stream 2 \(WS2\) Final Report<sup>13</sup>](#) which inter alia, recommended the adoption of the Framework of Interpretation developed for the ICANN Bylaws dealing with Human Rights. This is central to the human rights conversation and will ultimately affect PTI's operations.

## Recommendations

In light of the above, ARTICLE 19 suggests that PTI takes into account the following recommendations in its Strategic Plan FY21-24:

- Integration of Human Rights Considerations - We propose that PTI integrate human rights into its existing organization-wide monitoring or assessment processes and report transparently and regularly on human rights to build trust and engage with external stakeholders. This would be through incorporating

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11 Internet Corporation for Assigned Names and Numbers (ICANN) FY21 Adopted Budget  
<<https://www.icann.org/en/system/files/files/adopted-budget-fy21-07may20-en.pdf>> accessed May 27, 2020

12 ICANN Board Resolution on CCWG-Accountability WS2 – Final Report  
<<https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#2.c>> accessed May 27, 2020

13 CCWG-Accountability WS2 Final Report <<https://www.icann.org/news/announcement-2018-03-30-en>> accessed May 27, 2020

Human Rights Impact Assessments as part of its annual audit and assessment. This is fundamental towards achieving the objective of service delivery with high levels of transparency and accountability

- Bylaws reform- We recommend that PTI engages in reform of its Bylaws to incorporate Human Rights. This reform should be similar the ICANN process that was carried out by ICANN In 2016. This ICANN “Human Rights Core Value” specified that ICANN’s decisions and actions should be guided by “respecting internationally recognized human rights as required by applicable law,” within the scope of its Mission and other Core Values.
- Publication of Transparency Reports - In echoing this position, given PTI has identified that data privacy as a risk. We recommend that PTI be guided by Principle 8.3 of the Global Principles on Protection of Freedom of Expression and Privacy, and annually publish transparency reports with specific information about all requests and/or orders for disclosure of personal data they receive from states, courts, and private parties. This should also include information about actions taken by the company on such requests or orders.
- Effectively support and engagement with the ICANN EPDP Process-. We recommend that PTI engages through the ongoing Expedited Policy Development Process (EPDP) aimed at developing a Policy position that ensures that ICANN Is compliant with the European Union's General Data Protection Regulation (GDPR) and other relevant privacy and data protection laws.

## Conclusion

ARTICLE 19 is grateful for the opportunity to engage with PTI in this process in light of the 2016 IANA functions transition from unilateral U.S. government control to the global community.

As part of the civil society actors we look forward to continued collaboration to this end to strengthen human rights considerations within the Domain Name System and particularly on ICANN’s and PTI’s policies and procedure. Because at the heart of the protection of these rights lies the respect for, and protection of human dignity and individuals’ ability to live freely and engage with one another.

We welcome further engagement opportunities and avail ourselves to be of assistance in case of any questions or concerns.





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If you would like to discuss this analysis further, please contact Ephraim Percy Kenyanito, Senior Digital Program Officer at [ephraim@article19.org](mailto:ephraim@article19.org). Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Digital Programme, you can contact us by e-mail at [digital@article19.org](mailto:digital@article19.org).

For more information about the ARTICLE 19's work in the Digital Thematic Area, please contact Mehwish Ansari, Head of Digital at ARTICLE 19, at [mehwish@article19.org](mailto:mehwish@article19.org).