

## Comments from the Federal Office of Communications, Switzerland

Thank you for the opportunity to submit our comments to the draft Proposed Framework of Interpretation and Considerations concerning ICANN's Human Rights Bylaw.

We would like to share the following comments with you:

As a general remark, our impression is that the proposed framework of interpretation follows a too restrictive interpretation of the Human Rights Core Value, which may be seen as a way of constraining rather than really furthering the engagement to respect human rights.

The desirable minimum would be to at least follow the UN Guiding Principles on Business and Human Rights (UNGP), as we repeatedly expressed in the Subgroup discussions.

Accordingly, we propose that the following paragraph on page 4 (under "internationally recognized human rights") be reworded as follows: "However... *because they ~~only~~ create obligations for States. By committing to one or more of these international instruments, nation states are expected to embed human rights in their national legislation. **Businesses should respect human rights as set out in the UN Guiding Principles on Businesses and Human Rights.***"

As to the concept of "respecting" human rights, the UNGP go beyond just "avoid violating" them and should include also the positive commitment and notion "to avoid infringing on the human rights of others" and "should address adverse human rights impacts with which they are involved".

As to "internationally recognized human rights", a reference to the UNGP as standard for business enterprises should be included, as mentioned above. In addition references to other universal human rights agreements from the UN should be included, such as the Convention on the Rights of the Child, the International Convention for the Protection of All Persons from Enforced Disappearance, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> for reference).

Furthermore, also the humanitarian international public law should be considered, such as the Geneva Conventions.

Finally, there are also other relevant agreements which should be considered, such as the European Convention on Human Rights and the Budapest Convention on Cybercrime or the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108). The latter has been ratified by all the 47 member states of the Council of Europe and by Uruguay, Mauritius and Senegal. It is the only binding international instrument on the protection of fundamental rights and freedoms that includes the right to privacy when processing personal data. This instrument is not only a regional convention, but has a universal vocation since it is

open to the accession of non-member states of the Council of Europe. Several States have begun the accession process.

Regarding the interpretation of the section “as required by applicable law”, we consider that this element should never be used as a means to implicitly relativize the universality of human rights, subjecting and/or constraining them to national legislation. It would be desirable to include expressly that this means to “comply with all applicable laws and respect internationally recognized human rights”.

Thank you for taking them into consideration.

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