**Prelude:**

This is the working document of CCWG WS2 Design Team for ICANN Human Rights Bylaw Frame of Interpretation**. Please use ‘suggest’ mode at all times**

**Relevant documents:**

 [Design Team Wiki](https://community.icann.org/display/WEIA/Human%2BRights)

 [Background paper](https://docs.google.com/document/d/1wPU-ACb-320q4K-ScAsAwVVNYiHxlOfuNgrSKb67OYw/edit)

 [Concerns out potential negative or unintended impacts of HR bylaw](https://docs.google.com/document/d/1KcKGRJjuhKEzCh2AZ8PPR_MofOQFBN8CMuJqTG_h9h4/edit)

 [Summary of what was agreed & discussed during WS1 on Human Rights](https://docs.google.com/document/d/1rwpw9aSAqboRO2_rNkjMVJPOmYwmdr5B1_M_aNMoZb4/edit)

 [CCWG report](https://community.icann.org/pages/viewpage.action?pageId=58723827)

 [Annex 6](https://community.icann.org/download/attachments/58723827/Annex%2006%20-%20FINAL-Revised.pdf?version=1&modificationDate=1456255586000&api=v2)

 [Annex 12](https://community.icann.org/download/attachments/58723827/Annex%2012%20-%20FINAL-Revised.pdf?version=1&modificationDate=1456255865000&api=v2)

**Text of the new Bylaws Core Value as adopted in May:**

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights 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.

Text of Section 27.2. as adopted:

"Section 27.2. HUMAN RIGHTS (a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights (“FOI-HR”) is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations. (b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in

Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.

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Jorge: I wonder where the debate on the character of a “core value” has gone? I feel this is key as a premise for our work. According to the new Bylaws “core values” “should also guide the decisions and actions of ICANN” (see Bylaws 1. 2 b)) and they are subject to a specific interpretation and balancing rule according to section 1.2 c). These elements frame the effect of any core value, including the one on HR.

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**Draft Framework of Interpretation of ICANN’s Human Rights Bylaw**

1. **What is meant by ‘Internationally recognized human rights’, or: ‘which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw**

This list of declarations, conventions, treaties and guidelines form the basis of understanding of what ICANN understands as ‘human rights’:

* UDHR: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>
* ICCPR: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
* ICESCR: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
* ICERD: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>
* CEDAW: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>
* CRPD: <http://www.un.org/disabilities/convention/conventionfull.shtml>
* [DRIPS:](https://www.unglobalcompact.org/) <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>
* UN Guiding Principles on Business and Human Rights <https://business-humanrights.org/en/un-guiding-principles>
1. **What is meant by ‘respect human rights’**

From: <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. While I don’t disagree with this principle, please recognize that this absolutely DOES put ICANN in the business of making qualitative decisions regarding Top Level Domain contract awards. ICANN contracts with registries to award ten year contracts to run a TLD. This is a “business relationship.” If these Ruggie principles appear in the Framework of Interpretation, then ICANN necessarily must make qualitative decisions regarding Top Level Domain contract awards and must assess each one for Human Rights impact. This would be only one aspect of incorporating these principles. Again, I think we need some hypotheticals in relation to ICANN’s “business relationships” in order to measure the impact of a draft recommended FOI. See reference below to “human rights due diligence process”. (Anne Aikman-Scalese)

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

1. **What is meant by ‘applicable law’**
2. **What is meant by ‘not to enforce'**

Nation states have the obligation to protect human rights, which means that they actively intervene when human rights are being violated. ICANN has not got the mandate to enforce its commitment to human rights to third parties.

However ICANN [could, shall, must, will] commit to ensuring that ICANN the organization, the community and its meetings are a human rights enabling environment.

1. **What is meant by ‘not going out of ICANN’s scope’ (verbatim Bylaw says: “outside its Mission, or beyond obligations of other parties, against other parties”)**

As defined in the first Article of ICANN’s bylaws, ICANN has a narrow technical scope and mission.

what sort of content regulation are we talking about? Are we talking about content regulation at the string level? Or content regulation that can have effect on websites contents. I think we are talking about the latter. ICANN is a content regulator at the string level. This is evident when ICANN was treating the new gTLD applications. In the New gTLD applicants guidebook they have a GAC early warning. Although GAC decisions are not binding they have effects on the applicant and the application. Here is what the new gTLD guidebook said about GAC early warning: "While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse.”

At the string level, the commitment to human rights is expressed by GNSO: ICANN Generic Names Supporting Organisation Final Report Introduction of New Generic Top-Level Domains,

“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).”**[[1]](#footnote-0)**

 As to Anne's examples: At string level: if someone wants to register .childporn then that applicant will be stopped. The applicant also goes through a background check and if it states that it wants to carry out criminal acts, it will not be eligible in the first place to provide the service! Now we get to the next stage: After ICANN enters into the contract with the registry: Then it is up to contractual compliance to see if the registry is complying with the contract. Do we need to ask the registries not to violate the human rights and if they do, ICANN will not extend their contract? I don't think ICANN should become liable for the registry actions after they have entered into the contract.

We reach a more difficult point and that is the ccTLDs. Homosexuality is banned in some countries and sometimes people face severe punishments. There are websites under some ccTLDs that are degrading and criminalising homosexuality and not only they are not illegal but they are set up by respective ruling authority . ICANN still maintains these ccTLDs in the rootzone, is it violating human rights?

1. <https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> [↑](#footnote-ref-0)