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AL-ALAC-ST-0617-01-00-EN

ORIGINAL: English

DATE: 14 June 2017

STATUS: Ratification Pending

AT-LARGE ADVISORY COMMITTEE

ALAC Statement on the Draft Framework of Interpretation for Human Rights

Introduction

Bastiaan Goslings, ALAC Member of the European Regional At-Large Organization (EURALO), developed an initial draft of the Statement on behalf of the ALAC.

On 05 June 2017, the first draft of the Statement was posted on its [At-Large Workspace](#).

On that same date, ICANN Policy Staff in support of the At-Large Community sent a Call for Comments on the Statement to the At-Large Community via the ALAC Skype Group Chat to solicit quick feedback.

On 14 June 2017, a version incorporating the comments received was posted on the aforementioned workspace and the ALAC Chair requested that Staff open an ALAC ratification vote.

In the interest of time, the ALAC Chair requested that the Statement be transmitted to the ICANN public comment process, copying the ICANN Staff member responsible for this topic, with a note that the Statement is pending ALAC ratification.

Once ratified, this Statement will be resubmitted incorporating updated ratification information in the introduction section.

ALAC Statement on the Draft Framework of Interpretation for Human Rights

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 FoI: ‘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 FoI:

‘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 FoI: ‘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 FoI: ‘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.’