



Comment on Draft Framework of Interpretation for Human Rights

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Draft Framework of Interpretation for Human Rights

The Business Constituency (BC) appreciates the opportunity to comment on the Draft Framework of Interpretation (FOI) for Human Rights, an important next step in enhancing ICANN's accountability.

We commend the drafters of this document for laying the groundwork for ICANN's approach to human rights without inappropriately affecting ICANN's remit. More specifically, the following aspects of the framework make it an especially strong document:

- Recognizing the need for balance, flexibility, and a narrow scope, the framework emphasizes that human rights are to be a Core Value rather than a Commitment. ICANN's [Bylaws](#) note that "the specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission." By framing human rights as a Core Value, this FOI guards against overreach and ensures that human rights issues will be evaluated in a manner consistent with ICANN's Mission and remit.
- The document emphasizes that all human rights must be considered and balanced holistically rather than selectively highlighted to support a particular policy position. This strengthens ICANN's accountability to the community and encourages the Board to be deliberate when considering GAC advice. As a result, it protects against special interests having more sway over ICANN policy than the broader community and puts all of the work of the ICANN community in the context of respect for human rights generally.

In our [May-2016 comment](#) on new proposed ICANN Bylaws, the BC requested a change to the Bylaws text on human rights. In order to avoid ambiguity about enforceable rights, we recommended modifying a portion of that text to read:

"(viii) Subject to the limitations set forth in Section 27.3, 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 such other parties."

We commend ICANN for using this suggested text in the [adopted Bylaws](#), and also applaud the drafters of this FOI for including this language, which clarifies for the entire community how the issue of human rights should be approached.

In addition, the BC recommends that the phrase “internationally recognized human rights” in the Bylaws be considered together with the reference “as required by applicable law”, as recommended by the Working Group. Under the Human Rights Core Value, existing international human rights declarations and covenants continue to have no direct application to ICANN as they create obligations only for nation states.¹ We note that the question of applicable law in any given situation will need to be determined on a case by case basis.

In addition to the FOI itself, the Sub-Team also published a set of “Considerations” that the Sub-Team took into account in preparing the FOI, to serve as further guidance regarding the FOI and ICANN’s application of the Human Rights Bylaw. We support these considerations, which reiterate that ICANN, as a non-state private entity, is not party to any human rights instruments *per se* and acknowledges that human rights are universal, indivisible, interdependent and that as such, no particular human right should be considered in isolation.

As this important work moves forward, we recommend that each part of the ICANN community consider human rights in its policy development and decision-making processes. Each SO and AC can develop internal policies and frameworks to uphold and foster human rights.

The Business Constituency believes that respect for human rights is critically important. It is vital to ensuring that the Internet continues to be a driver of social and economic opportunity around the world.

We applaud ICANN for recognizing the importance of this issue and crafting a position as a promoter of human rights -- rather than a *regulator* of human rights -- and we look forward to working with all parts of the ICANN community on this issue.

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This comment was drafted by Hibah Kamal-Grayson and Andrew Mack.

It was approved in accordance with the BC charter.

¹ There are a range of international human-rights declarations and covenants that could be relevant to ICANN’s Human Rights Core Value, including the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#), the [International Covenant on Economic, Social and Cultural Rights](#), [International Convention on Elimination of All Forms of Racial Discrimination](#), [Convention on the Elimination of all Forms of Discrimination Against Women](#), [Convention on the Rights of Persons with Disabilities](#), the [UN Declaration on the Rights of Indigenous Peoples](#), and the [Declaration on Fundamental Principles and Rights at Work](#). These documents create obligations for nation states and their national legislation, but none of them has a direct application to ICANN.