

Draft Framework of Interpretation for Human Rights

Cross Community Working Group on Enhancing ICANN Accountability,
Work Stream 2 (CCWG-Accountability, WS2)

Comments submitted to the Public Consultation by Mark Carvell
United Kingdom Representative on ICANN's Governmental Advisory
Committee (GAC) and Co-Chair of the GAC's Human Rights & International
Law Working Group (HRIL WG)

i. Why the Human Rights Core Value needs effective and universally accepted interpretation

Universal respect for human rights is an intrinsic part of ICANN's mission to serve the global public interest. Such respect enhances ICANN's global legitimacy and accountability. It valuably complements in a uniform way across the ICANN community, the role of ICANN's Governmental Advisory Committee (GAC) on matters of public interest including adherence to fundamental human rights.

This requirement to respect human rights has become all the more critical as ICANN's technical mission has gained greater prominence in the affairs of the global Internet stakeholder community and the policy development undertaken by the ICANN community has impacted all sectors and users of the Internet. The evolution and expansion of the generic top level of the domain name system during the last decade has brought this impact into sharp relief: there have been numerous policy development processes and decisions where questions about rights have come to the fore of the stakeholder deliberations and where the GAC has necessarily had to intervene. For example, there have been questions about how ICANN can ensure there is fair and legitimate opportunity for communities to express themselves and assemble online.

ICANN took a major step forward, therefore, in incorporating the Human Rights Core Value in its Bylaws because this reaffirmed ICANN's existing obligations and substantially clarified ICANN's commitment to respect Human Rights which was not previously fully understood or appreciated by many ICANN stakeholders and members of the ICANN leadership.

It is important therefore that the ICANN global stakeholder community understands fully how this core value should be implemented throughout its operations by the Supporting Organisations and Advisory Committees, the ICANN Board and its staff. Taking full account of the extensive discussions in the community, the work of the CCWG-Accountability Sub-group on Human Rights is therefore commended and for all its hard work in developing the draft Framework of Interpretation for Human Rights. The Chair of the Sub-group, Niels ten Oever is congratulated for his steadfast commitment to steering the group in an open, inclusive and transparent way in order to produce the draft Framework.

ii. Support for the Framework of Interpretation

The result of the Sub-group's work should now be supported as providing the effective means for enabling the ICANN community to adapt to the regime of adherence to human rights consistent with the Core Values in the Bylaws. The SOs and AC's are encouraged to review the Framework in order to ensure compliance in their operating principles, working modalities, management protocols and day-to-day operations.

iii. The Considerations: UN Guiding Principles on Business and Human Rights

ICANN is a private organisation under US law and as such it is not a duty-bearer under international human rights law, as is the case for nation states. The UN Guiding Principles on Business and Human Rights, unanimously adopted by the United Nations Human Rights Council in June 2011, established that business enterprises - including trans-national entities - have a responsibility to respect human rights.

It is noted that the potential applicability of these Guiding Principles to ICANN – a private sector-led, multi-stakeholder transnational entity - was comprehensively discussed by the CCWG Accountability Sub-group on Human Rights.

The argument that the entirety of the UN Guiding Principles could not be cited as a reference point, or source of guidance, for interpreting ICANN's Human Rights Core Value, is readily understood and accepted: much of the text is concerned with State responsibilities.

However, it is very disappointing that there is no reference in the Framework to the UN Guiding Principles despite the direct applicability of key elements of the second pillar relating to corporate responsibilities. These relate for example the conduct of due diligence, ensuring transparency, the undertaking of impact assessments, instituting mechanisms for correcting negative impacts, and generally integrating a culture of commitment to respect human rights throughout the organization. As such they provide fundamental elements of universal best practice for effective adherence to human rights and therefore merit direct reference in the Framework of Interpretation.

Given the private sector-led, multi-stakeholder constitution of ICANN there seems to be no inherent disruptive conflict or inconsistency created by reference to these elements in the universally accepted UN Guiding Principles. It is hoped, therefore, that in the course of finalising the Framework of Interpretation following the current public consultation, there will be further consideration of the applicability of those elements of corporate responsibility contained in the UN Guiding Principles on Business and Human Rights and of the value of their due reference cited in the final document as an instrument for all the SOs and ACs – including the GAC - and their respective sub-groups and constituency parts to take fully into account in their strategies for implementing the human rights core value.

Furthermore, if these UN Guiding Principles are not directly cross-referenced

in part by the Framework of Interpretation, it would be a lost opportunity for the ICANN community to be a global transnational beacon for advancing corporate respect for human rights.

Mark Carvell

Head of Global Internet Governance Policy,

Department for Culture, Media & Sport, United Kingdom Government

16 June 2017