

Staff Report of Public Comment Proceeding

Proposed ICANN Community Anti-Harrassment Policy			
Publication Date:	26 January 2017		
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Public Comment Proceeding		Important Information Links	
Open Date:	7 November 2016		
Close Date:	12 January 2017		
Staff Report Due Date:	26 January 2017		
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Section I: General Overview and Next Steps			
General Overview:			
<p>During and after ICANN55, the issue of certain community-member conduct toward one another was raised in various sessions and lists, and the Board agreed to address this matter. In response, the Board approved a revised ICANN Expected Standards of Behavior, and directed “the President and CEO, or his designees to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harrassment policies to assist in the development of a Community anti-harrassment policy/procedure to be followed at ICANN Public Meetings, which could include items such as complaints handling and resolution and enforcement processes.” (Resolution 2016.05.15.05)</p> <p>On 7 November 2016, ICANN published the proposed ICANN Community Anti-Harrassment Policy (the Draft Policy) for public comment. The Draft Policy sets out how participants in the ICANN community are expected to behave when participating in ICANN’s multistakeholder processes. It was created following consultation with experts and after consideration of the public comments received on the already adopted revisions to ICANN’s Expected Standards of Behavior. The community called for a more detailed policy statement and a complaint procedure, which is included in the proposal for the community’s consideration and input. The public comment period closed on 12 January 2017.</p>			
Section II: Contributors			

At the time this report was prepared, a total of 14 community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
At-Large Advisory Committee	Olivier Crepin-Leblond & Sebastien Bachollet	ALAC
Pakistan Telecommunication Authority	Waqas Hassan	PTA
Internet Service Provider and Connectivity Provider Constituency	Mark McFadden	ISPCP
Registries Stakeholder Group	Stéphane Van Gelder	RySG
Blacknight Internet Solutions Ltd	Michele Neylon	BIS
Internet Infrastructure Coalition (i2Coalition)	Jay Sudowski	i2c
NonCommercial Users Constituency	Corinne Cath	NCUC
Intellectual Property Constituency	Gregory S. Shatan	IPC
Non-Commercial Stakeholders Group	Matthew Shears	NCSG
Business Constituency	Steve DelBianco	BC

Individuals:

Name	Affiliation (if provided)	Initials
Stephanie Perrin		SP
Anna Loup	NCUC	AL
Darcy Southwell and Kathy Kleiman		DS & KK
Edward Morris		EM

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

In general, most of the commenters were very supportive of the Draft Policy and applaud the development of such a policy. BIS expressed concerns that such a policy may have a chilling effect and encouraged that the policy be kept as narrow in scope as possible. The commenters also suggested revisions to the Draft Policy, which are summarized below.

Comments regarding the Inclusion of a Mission Statement, Statement of Purpose and/or Preamble to the Policy

Several organizations (ISPCP, SP, RySG) and one individual (SP) suggest the inclusion of a mission statement and/or preamble that highlight the goal of the Community Anti-Harassment Policy. For example, the ISPCP suggests the inclusion of the following mission statement: “A guiding goal of ICANN’s Anti-Harassment Policy is to emphasize, encourage, and promote the spirit of mutual respect expected within the ICANN community. We understand that

society's values and norms have and will continue to evolve. However, such respect is timeless and is a guiding foundation of this policy.” (ISPCP)

Comments regarding Section 1 of the Draft Policy

The commenters agree that the “Specified Characteristics” listed in the Policy should not be exhaustive and suggest that language be revised to indicate that the draft list is not exhaustive. Several commenters (RySG, BIS, BC) suggest removing the reference to “cancer and genetic characteristics”. One commenter recommends adding “educational level and social background” to in the definition of “Specified Characteristics.” (RySG) The BC notes that referring to specific medical condition as “sex” does not comport with common understanding of gender characteristics and should be removed. The NCSG notes concerns that the current list of “Specified Characteristics” is unwieldy and can lead to unnecessary confusion” and suggests that the IETF anti-harassment policy provides a more concise and clear view. The NCSG recommends striking a “happy medium” between the IETF list and the current list in the Draft Policy.

Some commenters (ALAC, AL) object to term “professional manner”, while others (DS & KK, EM) express a preference for the terminology as it supports the global nature of the ICANN community.

Comments regarding Section 2 of the Draft Policy

Several organizations and individuals (ALAC, BIS, RySG, i2C, NCUC, NCSG and SP) suggest the definition of “harassment” should include acknowledgement of “the diversity of the ICANN global community and acceptance or otherwise of what are socially accepted norms within different cultures.” (ALAC) The commenters propose adding the notion of affirmative consent to the definition of harassment. Some commenters (IPC, AL, DS, KK, BIS) suggest adding the phrase “unwanted” or “unwelcome” to the definition. The RySG recommends that “the text be change to indicate that the listed examples [of harassment], to be considered as harassment and as such prohibited conduct, must be unwelcome, unsolicited and regarded as offensive or undesirable by the victim.” (RySG) The NCUC express support for this section generally but indicates concerns on the need for a list of “harassing behavior.” (NCUC) The NCSG, NCUC and AL suggest that the list of inappropriate conduct should be rewritten to include harassment in the broader sense rather than focusing on sexual conduct. The IPC suggests including language about what may not constitute harassment.

One individual (EM) believes that the inclusion of a qualification such as “unwanted” or “nonconsensual” is unnecessary since it assumes that “if a listed act is desired, it would not result in a complaint under this Policy.”

Some commenters express discomfort in how ‘inappropriate conduct’ is defined. SP and BC believe “intent” should be established before a behavior can be deemed inappropriate. IPC suggests changing references of “inappropriate conduct” to “behavior that violates the Anti-Harassment Policy”.

Comments regarding the Reporting and Complaint Procedure

Several organizations (RySG, i2c, NCUC, NCSG and IPC) believe that the reporting and complaint procedure should allow for informal reconciliation between the parties. However,

the IPC indicates that informal reconciliation should not be a precondition for moving forward in the complaint process. EM notes that in some offensive situations, a requirement for information reconciliation may result in further harm.

Several commenters (RySG, NCUC, NCSG) recommend providing a general timeline or expected path after a complaint is filed. Some commenters (i2C, DS & KK) suggest more specificity on implementation such as the “inclusion of the investigation procedure, criteria for decision-making, and possible remedial actions.” (DS & KK)

The commenters offer differing opinions on the role of the Ombudsman. The consensus is that the Ombudsman is given too much power. (BC, i2C, NCSG, NCUC, DS & KK and SP) The BC proposes a process that separates investigation and decision roles; whereby the Ombudsman will gather the facts and a recognized expert, contracted by ICANN, will make the determination of whether a violation has occurred. Several organizations agree that the Ombudsman *not* be allowed to make findings of fact and determine remedial action, but instead, allow another role within ICANN to take on this responsibility. AL suggests using a trained supporting committee of human resource coordinators to examine the case, provide determination, and call for remedial action. The NCSG and NCUC suggest the creation of an anti-harassment team consisting of 3 individuals from different genders and geographic locations. There is also a call from IPC, i2c and DS & KK to increase the diversity of the Ombudsman’s office so that the accused may have a choice to whom they report the harassing conduct to.

NCUC, NCSG, BC, IPC, AL, EM and SP agree that there should be a statement emphasizing anonymity and confidentiality for “both the alleged victim and the alleged perpetrator.” (EM)

There should be a statement allowing reporting parties to withdraw a report (AL), as well as a mechanism for dealing with vexatious complaints (NCUC).

Several organization and individuals (NCSG, NCUC, i2C, BC, IPC, DS & KK, SP and EM) suggest the inclusion of a grievance mechanism, which would include an appeals process.

Both the ISPCP and PTA suggest additional penalties if the Ombudsman determined a person to be in violation of the Policy. The PTA suggests that a set of remedies and penalties should be clearly specified and that a counter remedial action on complainants if the Ombudsman determined that the complaint “was malified and targeted towards tarnishing someone’s reputation.” (PTA)

Other Comments/Proposed Revisions to the Draft Policy

The NCSG and NCUC state that the Draft Policy does not address the issues of confidentiality and privacy, and suggest that the Draft Policy be updated to include such language.

Some commenters (AL, i2C, DS & KK and EM) agree that written policy alone is not sufficient. Instead, ICANN needs to engage in regular conversations to promote the existence of the policy and provide opportunities to educate the community about behaviors that are problematic. (AL and DS & KK)

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN appreciates all the comments and suggestions added to the public forum for the proposed Draft Policy. ICANN and members of the community share the goal of ensuring that ICANN community members are able to participate and contribute within an environment that remains free from harassment. ICANN worked with experts, as appropriate and necessary, to develop the Draft Policy. The Draft Policy incorporates many of the ideas suggested in response to the public comments received on the revised Expected Standards of Behavior.

Recommendation to Include a Mission Statement, Statement of Purpose and/or Preamble to the Policy

The Draft Policy was developed to work in parallel with ICANN's revised Expected Standards of Behavior. ICANN will re-evaluate the Draft Policy in conjunction with the revised Expected Standards of Behavior, as well as consult with experts, to develop a preamble to the policy as deemed appropriate.

Comments regarding Sections 1 and 2 of the Draft Policy

As a preliminary matter, in terms of comments about terminology in Sections 1 and 2 of the Draft Policy, we note that some suggest that certain definitions should be limited, while others suggest they should be expanded or reworded, partly due to cultural differences. It is well understood and expected that there are cultural differences among ICANN participants, and it is anticipated that any evaluation of conduct that might be challenged will certainly take those differences into consideration.

ICANN agrees that the "Specified Characteristics" identified in the Policy is not intended to be an exhaustive list and will revise the current language to so indicate. ICANN agrees with the recommendation to remove the reference to "cancer and genetic characteristics", as well as the recommendation to add "educational level and social background" to in the definition of "Specified Characteristics." ICANN will revise the current draft language accordingly.

ICANN acknowledges the importance of cultural norms when defining harassment. ICANN will further consult with experts regarding the comments on consent and the appropriateness of appending Section 2 to include this concept.

With respect to the examples of inappropriate conduct identified in Section 2 of the Draft Policy, ICANN notes that the bullet point list of examples of inappropriate conduct are intended to be examples only, and should in no way be viewed as an exhaustive list. With that said, ICANN will re-review the existing list and consider additional examples as needed.

Comments Regarding the Reporting and Complaint Procedure

With respect to the recommendation regarding informal reconciliation, while parties are

encouraged to resolve disputes informally, making informal reconciliation a requirement would not be appropriate.

With respect to the comments and suggestions regarding who should evaluate a complaint made under the Policy, the method of review, an appeals mechanism, ICANN will take the recommendations under consideration and consult with experts as to whether what changes, if any, may be appropriate.

As it relates to the concerns expressed regarding anonymity and confidentiality, pursuant to Article 5 of the ICANN Bylaws, the Ombudsman process is confidential unless waived by the complainant. Accordingly, it does not seem necessary to change the current draft language.

Next Steps: Following the completion of the public comment process, ICANN will consider the comments provide, and consult with experts as part of its assessment of whether the Draft Policy language requires any changes.