Comments on the Proposed Anti-harassment Policy

This is a comment on the proposed anti-harassment policy, which I submit on **my own** behalf and not in my capacity as a representative of NCUC or NCSG. ICANN is to be commended for its efforts to establish an inclusive, welcoming environment for all its global stakeholders. I hope that my comments will be considered as a positive contribution to this next step in clarifying what is considered to be acceptable behaviour in our meetings and online participation.

I have offered my comments as a markup on the original document.

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ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure1

Because ICANN already has Expected Standards of Behaviour, it seems to me that a purpose statement is required to explain why a separate harassment policy is required. Arguably, all conduct which is described below is already covered by the Expected Standards of Behaviour. I do understand, as described in the Board discussion of the resolution to post this policy for comment, that an emergency situation arose at Marakech in 2016 and there was a common view that ICANN needed a harassment policy. However, the policy must hereafter stand on its own feet, and a purpose clause would clarify why we need it. Is it:

* To harmonize and further clarify expected behaviour regarding sexual behaviour of all kinds in a global society where standards are very different?
* To protect individuals further from any kind of discrimination or pressure exerted by any member of the community, including leaders of stakeholders groups, staff, those who participate randomly at meetings, etc.?
* Set standards of “decency”, (in which case further definitions may be required)?
* Stop consensual behaviour between adults in public, for reasons relating to the comfort level of other participants with different community standards?
* Facilitate the investigation of offences which may take place in venues where the rules and criminal procedures for sexual offences are different from those in western nations (and particularly California as the jurisdiction in which ICANN is incorporated)?

As a condition of participation in ICANN’s multistakeholder processes, those who take part must:

1. Behave in a professional manner, demonstrate appropriate behavior and treat all members of the ICANN community in a respectful, dignified, decent manner at all times, including in face to-face and on-line communications, irrespective of

Specified Characteristics so that individuals of all backgrounds and cultures are made to feel welcome. Specified Characteristics means age, ancestry, color, physical or mental disability, genetic information, medical condition (cancer and genetic characteristics), marital status, national origin, race, religion, sex (which includes pregnancy, childbirth, medical conditions related to pregnancy or childbirth, gender, gender identity and gender expression), sexual orientation, citizenship, primary language, or immigration status.

2. Refrain from harassment of any type. Harassing conduct or commentary may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of phones or applications of various kinds on the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Conduct does not have to intend to harm, be directed at a specific target, or involve repeated incidents in order for it to be deemed harassment. Examples of the types of inappropriate conduct that are prohibited by this policy include, but are not limited to, the following:

•Sexually suggestive touching

•Grabbing, groping, kissing, fondling, hugging, stroking someone’s hair, or brushing against another’s body

•Touching that the actor may not have intended to be sexually suggestive but which constitutes uninvited touching, such as rubbing or massaging someone’s neck or shoulders

•Violating someone’s “personal space”

after being told you are doing so

•Leering, stalking, or suggestive whistling

•Gesturing in a sexually suggestive manner

•Circulating or posting written or graphic materials that show hostility or disrespect toward

or that demean individuals because of Specified Characteristics as set forth above

•Lewd or graphic comments or jokes of a sexual nature

•Distribution of sexually suggestive images and references to sexual behavior

1

This Policy is not intended to impede or inhibit free speech.

This is a fine statement, but frankly if you are not going to explain how one finds the boundaries of free speech, it is a throw-away line. You need to elaborate here on exactly what the purpose of the policy is, as a way to balance the values of free speech and acceptable conduct.

•Repeated requests for dates, or unwanted communications of a romantic nature, after the individual receiving them indicates that she or he does not wish to receive them.

3.Refrain from retaliation against anyone for reporting any conduct or commentary that is inconsistent with the terms set forth above (“inappropriate behavior”) or for participating in an investigation of any such report or complaint.

Reporting and Complaint Procedure

The following reporting and complaint procedure is available to anyone who identifies inappropriate behavior.

1.The individual who identifies inappropriate behaviour may:

(i) communicate with the person(s) responsible and attempt to resolve the issue informally; and/or

(ii) promptly report to the Ombudsperson the facts giving rise to a belief that inappropriate behaviour has occurred and cooperate fully in the ensuing investigation of the complaint.

2.The Ombudsperson will review and evaluate the complaint. The evaluation will include the following, as appropriate in the sole discretion of the Ombudsperson, in an effort to obtain an understanding of the facts:

(i) communication with the complainant to clarify the facts giving rise to the complaint;

(ii) inquiries of the accused to obtain a response to the complaint if, in the Ombudsperson’s discretion, the complainant has provided sufficient facts to support the allegation that inappropriate behaviour has occurred; and

(iii) communication with other percipient witnesses, and review of

documentary evidence, if any and if appropriate.

3.The Ombudsperson will determine whether inappropriate behaviour has occurred and will communicate the results to the

complainant and the accused. No “corroboration” is required to support a finding; the Ombudsperson will consider the credibility of each party in making a determination.

4.The Ombudsperson will determine what remedial action, if any, is appropriate in light of the findings of the evaluation.

If the Ombudsperson in its discretion, finds that remedial action is appropriate, that remedial action may include, but is not limited to, excusing any individual responsible for inappropriate behaviour from further participation in the ICANN process for a specified period of time, limiting the individual’s participation in some manner, and/or requiring satisfaction of pre-requisites such as a written apology as a condition of future participation.