INDIVIDUAL COMMENT OF EDWARD MORRIS ON THE PROPOSED ICANN COMMUNITY ANTI-HARASSMENT POLICY AND TERMS OF PARTICIPATION AND COMPLAINT PROCEDURE

I welcome the opportunity to comment on this proposed ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure. The ICANN Board should be praised for tackling the problem of widespread sexual harassment at ICANN face- to-face meetings through this policy and for extending it to other forums in which ICANN community members interact. The proposed policy is not perfect, but it is very good as a holistic document, and I would encourage the Board to adopt it with minimal change.

I do not use the term “widespread” with reference to sexual harassment lightly. My perspective is directly related to my own experience at ICANN. For four of five meetings, beginning with ICANN 52, I encountered community members who claimed to have experienced harassment at the hands of others within the community. I use the term community loosely. On one occasion a staff member confidentially told myself and another community member, a GAC representative, that s(he) felt harassed by a member of the Board. S(he) didn’t want to complain, fearing for her job, but asked that we leave a reception with him / her, asked that she/he could accompany us to a concert we were about to attend, so that the inebriated perpetrator would not follow her/him back to his/ her hotel. That staff member left ICANN employment shortly after that meeting. I don’t blame her/him.

On two occasions I’ve seen women break into tears, upset as they were at what they had experienced. I never knew what to do, how to handle the situation. You counsel the victim, offer support, but there was never a standard procedure at ICANN for tackling this problem. In Marrakech things exploded. The culture at that meeting was the most sexist I have encountered in my professional life. Pole dancers masquerading as legitimate local culture at events sponsored by firm’s participating at the ICANN Meeting just accented the problem. One event of alleged harassment, in particular, unfortunately received widespread publicity. Neither party, in my view, was treated fairly in the matter, the publicity helped no one, and the Ombudsman’s report left much to be desired.

I lost faith in ICANN’s willingness to deal with this matter, for a time. At Helsinki I made myself available as a referral source for those in my part of the ICANN community who felt they had experienced harassment:

<https://listserv.syr.edu/scripts/wa.exe?A2=ind1606&L=NCSG-DISCUSS&F=&S=&P=165402>

As a result of that post, and others like it, two members of the ICANN community asked for a referral. They were made. Of greater importance, to me, the post led to a number of people confiding in me about episodes of harassment they claimed to have repeatedly experienced since the early days of ICANN. The problem was a lot worse than even I feared.

One theme that ran through the interactions involving women was the thought that if they complained about the harassment their future in the industry would be damaged. One alleged perpetrator, a friend and colleague, expressed the same concern, should the allegations against him be publicized. My takeaway from this is that regardless of whatever policy is adopted by ICANN, both the alleged victim and the alleged perpetrator MUST be guaranteed complete and absolute privacy by ICANN. Should either party not abide by this requirement during the pre-judgment phase, ICANN should immediately disengage from further cooperation with the offending party and refer both parties involved to the appropriate local authorities, if appropriate. ICANN should, however, retain the right to impose remedial sanctions in such a situation.

This more personal part of my comment is included in my comment because I want it to be absolutely clear to the Board about how important getting this right is to the community and to the corporation. I am disturbed that some members of the community, drawing upon their personal experiences, have minimized this problem in making their public comments. We all have different experiences, mine is described herewith, and I hope my comments will give the Board a different perspective from some of the others that have been submitted, comments which seem to minimize the problem part of this policy is designed to address.

I should note that it’s not just those involved in any specific incident that are impacted by a suboptimal culture that tolerates some form of harassing behavior, it’s all of us. It’s the extra work we have to do when volunteers walk away, it’s those who don’t come in the first place having heard negative things about ICANN…this happens. Too often.

I want to thank the Board for putting this Policy before the community for comment. In Helsinki I certainly inserted myself in a place I wasn’t comfortable being, but what I saw was so discouraging and wrong I could not easily stand idle. I’m glad this Board has taken a similar attitude and has committed itself to doing the right thing.

A few general comments on the proposal itself:

1. By retaining an expert “with experience in drafting and implementing relevant anti-harassment policies” the Board has taken exactly the right approach to this issue. These issues are complex and certainly there are few in this community with professional qualifications in this field.

I would ask the Board to give wide latitude to the advice received by the retained expert and to make changes only when contraindicated by widespread community opposition or by advice proffered by ICANN Legal.

A special note about the later: there are corporate liability issues that arise with this matter. I would ensure that ICANN Legal has the last say in any policy that is enacted. I certainly would not want the Board to enact policy provisions opposed by the “expert” and/or ICANN Legal. There are certain areas where specifics are best left to those with subject matter expertise. This is one of them.

2. At recent meetings ICANN has ensured that some type of medical assistance is located on site. In one of the instances of alleged harassment I am aware of, I became very concerned about the mental stability of one of the alleged victims. Beyond this policy, I would suggest that any provision of medical assistance include a requirement that ICANN retained medical personnel be able to refer impacted individuals to counseling, mental health treatment centers or support groups. Sometimes the residue of perceived major harassment can’t wait for more policy oriented processes to kick in.

3. ICANN is neither a government nor a police force. This policy and investigation by ICANN should not be a substitute for what appropriately belongs to local law enforcement. I would suggest language acknowledging this be inserted into the Policy as a disclaimer and that ICANN staff be instructed to treat potential violations of law in an appropriate manner. This ICANN Policy needs to be seen as something specific to ICANN related activities or meetings, as an add on to existing legal protections, not as a replacement for them.

4. Without domestication or mutual recognition agreements, restraining orders are valid only in the issuing jurisdiction. Given the short duration of ICANN meetings it is often impossible or impracticable to domesticate such an order. I would ask ICANN to consider establishment of a procedure where such orders are recognized and enforced at venue sites, once registered with the Office of the Ombudsman, during ICANN meetings, regardless of where the restraining order originated (provided it was issued by an authority with appropriate jurisdiction). This procedure should be part of this Anti-Harassment proposal.

I am personally aware of one individual who did not attend the Hyderabad meeting out of fear his restraining order would not be recognized.

5. Free expression should not be hampered by any policy against harassment. I strongly support the proposal by RySG to add the following language to the preamble to the Policy:

‘The ICANN Community Anti-Harassment Policy is not intended to impede or inhibit free speech but to create a safe environment that bolsters free speech and participation for all attendees and participants in ICANN Multistakeholder Processes”.

6. In section 1 of the Policy I support maintaining the word “professional” as a descriptor of desired behavior. I reject the claim by some commenters that this term is based upon culture or would detract from the environment desired at ICANN Meetings. Indeed what some commentators refer to as “warm and welcoming” may manifest itself in ways that are manifestly unprofessional. ICANN is a business not a social club.

7. I support retention of section 2 of this paper as written. I do not support any inclusion of a qualification of “unwanted” or “nonconsensual” modifying the actions depicted. One assumes that if a listed act is desired it would not result in a complaint under this Policy. Adding a mens rea aspect to this Policy complicates enforcement and switches focus from the act itself to the state of mind of those involved. The default conduct then becomes permitted unless expressly rejected rather than, appropriately, prohibited unless expressly requested.

8. The blanket suggestion that the individual identifying the potential harassment should attempt to resolve the situation informally should be removed from the proposed Policy. While this “advice” may be appropriate in some situations, in more offensive situations it could result in further harm accruing to the victim and expose ICANN to legal liability as the entity encouraging the interaction.

8. The Ombudsperson should not be the appropriate point of first contact for complaints of harassment. That is not the function of that Office, an office that exist to enforce the concept of “fairness” at ICANN. Rather ICANN should expand the remit of those members of its human resources team trained in responding to allegations of harassment to include complaints involving community members. Those team members should be responsible for receiving and investigating harassment complaints. Once the investigation is completed the results should be communicated to the Ombudsman who may then take any remedial action he or she feels is necessary, per the limitations and dictates of this Policy and any other ICANN policy applicable to the matter.

9. Any decision by the Ombudsperson or appropriate ICANN authority resulting in remedial action should be capable of appeal through the Reconsideration process, §4.2 of the ICANN Bylaws.

10. A policy of this nature is not effective if those it applies to are unaware of it. Once adopted ICANN needs to publicize Policy specifics and, of greatest importance, should ensure that the first point of contact is well publicized, particularly so at face-to-face meetings. Participants need to know what the Policy is and where to go to implement its protections.

11. Education is key to any policy attempting to control not only behavior but intending to precipitate cultural change. A module focused both on this Policy and on the Expected Standards of Behaviour should be developed within the ICANN Learn platform and incorporated as part of the Fellowship, NextGen, Leadership Academy and online training programmes.

The ICANN Board should be commended for initiating this proposed Policy. This is a time of great transition for the corporation and as it grows and expands its competence it must also ensure that the culture at ICANN is welcoming and nonthreatening to all. This is not an easy task, and will not result from policy alone, but it is an essential task and this proposed Policy will help us get there.

Edward Morris