

Submission by the Centre for Internet and Society on Revisions to ICANN Expected Standards of Behaviors

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We at the Centre for Internet and Society (“CIS”) are grateful for the opportunity to comment on the proposed revisions to ICANN’s Expected Standards of Behavior. (“Standards”).

Before providing specific comments on the proposed revisions, CIS would like to state for the record our extreme disappointment while noting that there is no indication of the intention to draft and adopt a dedicated anti - harassment policy. We are of the firm opinion that harassment, and particularly sexual harassment, is not only a sensitive topic, but also a deeply complex one. Such a policy should consider scope, procedural questions, redressal and remedies in cases of harassment in general and sexual harassment in particular. A mere change in language to these Standards, however well intentioned, cannot go too far in preventing and dealing with cases of harassment in the absence of a framework within which such instances can be addressed.

Some of the issues that arose at ICANN55 were confusion surrounding the powers and limits of the Ombudsman’s office in dealing with cases of harassment, the exact procedure to be followed for redressal surrounding such incidents, and the appropriate conduct of parties to the matter. There will be *no clarity in these respects*, even if these proposed changes are to be adopted.

Specifically, the proposed language is problematic and completely inadequate for the following reasons:

1. Vague

Terms like “*professional conduct*” and “*appropriate behavior*” mean little in the absence of a definition that entails such conduct. These terms could mean vastly different things to each community member and such language will only encourage a misalignment of expectation of conduct between community members. The “general” definition of harassment is at best, an ineffective placeholder, as it does not encompass exactly what kind of behavior would fall under its definition.

2. Fails to consider important scenarios

The proposed language fails to consider situations where some attempts or advances at communication, sexual or otherwise, occur. For example, consider a situation in which one community member stalks another online, and catalogues his/her every move. This is most certainly foreseeable, but will not be adequately covered by the proposed language. Further, terms like “*speech or behavior that is sexually aggressive or intimidates*” could or could not include types of speech such as art, music, photography etc, depending on who you ask. It also does not explain the use of the word behavior - physical, emotional, professional, online behavior are all possible, but the scope of this term would depend on the interpretation one chooses to apply. In part 4 below, we will demonstrate how ICANN has applied a far more detailed framework for harassment elsewhere.

3. Ignores complexity

In discussions surrounding the incident at ICANN55, a number of issues of arose. These included, *inter alia*, the definition of harassment and sexual harassment, what constituted such conduct, the procedure to be followed in such cases, the appropriate forum to deal with such incidents and the conduct that both parties are expected to maintain. These questions cannot, and *have not been answered or addressed* in the proposed change to the Standards. CIS emphasizes the need to understand this issue as one that must imbibe differences in culture, expectation, power dynamics, and options for redressal. If ICANN is to truly be a safe space, such issues must be substantively and procedurally fair for both the accused and the victim. This proposed definition is woefully inadequate in this regard.

4. Superficial understanding of harassment, sexual harassment

The proposed changes do not define harassment, and sexual harassment in an adequate fashion. The change currently reads, “*Generally, harassment is considered unwelcome hostile or intimidating behavior -- in particular, speech or behavior that is sexually aggressive or intimidates based on attributes such as race, gender, ethnicity, religion, age, color, national origin, ancestry, disability or medical condition, sexual orientation, or gender identity.*” These are subject to broad interpretation, and we have already highlighted the issues that may arise due to this in 1, above. Here, we would like to point to a far more comprehensive definition.

ICANN's own Employment Policy includes within the scope of sexual harassment “*verbal, physical and visual conduct that creates an intimidating, offensive or hostile working environment, or interferes with work performance.*” The policy also states:

“*Harassing conduct can take many forms and includes, but is not limited to, the following:*

- 1. Slurs, jokes, epithets, derogatory comments, statements or gestures;*
- 2. Assault, impeding or blocking another's movement or otherwise physically interfering with normal work;*
- 3. Pictures, posters, drawings or cartoons based upon the characteristics mentioned in the first paragraph of this policy.*

Sexually harassing conduct includes all of the above prohibited actions, as well as other unwelcome conduct, such as requests for sexual favors, conversation containing sexual comments, and unwelcome sexual advances.”

This definition is not perfect, it does not comprehensively consider advances or attempts at communication, sexual or otherwise, which are unwelcome by the target. Nonetheless, CIS believes that this is a far more appropriate definition that does not include vague metrics that the proposed changes do. Since it is one ICANN has already adopted, it can act as an important stepping stone towards a comprehensive framework.

Like ICANN, UNESCO’s organisational approach has been to adopt a comprehensive [Anti-Harassment Policy](#) which lays down details of definition, prevention, complaint procedure, investigations, sanctions, managerial responsibility, etc. Acknowledging the cultural sensitivity of harassment particularly in *international situations*, the policy also recognizes advances or attempts at communication, sexual or otherwise. Most importantly, it states that for conduct to come within the definition of sexual harassment, it *“must be unwelcome, i.e. unsolicited and regarded as offensive or undesirable by the victim.”*

Conclusion

In conclusion, we would like to reiterate the importance of adopting and drafting a dedicated anti-harassment policy and framework. The benefits of safety, certainty and formal redressal mechanisms in cases of harassment cannot be over emphasized.

Importantly, such measures have already been taken elsewhere. The IETF has adopted an [instrument](#) to address issues of harassment that occur at meetings, mailing lists and social events. This instrument contemplates in detail, problematic behavior, unacceptable conduct, the scope of the term harassment, etc. It further envisages a framework for redressal of complaints, remediation, and even contemplates issues that may arise with such remediation. It is particularly important to note that while it provides a definition of harassment, it also states that *“Any definition of harassment prohibited by an applicable law can be subject to this set of procedures.”*, recognising harassment as a deeply personal and subjective experience, and thus encouraging members to take up issues of harassment as per their cultural norms and national laws, which are then considered as per procedures laid down. A similar effort within the ICANN community is critical.