Cross-Community Working Party on ICANN and Human Rights

Michael Karanicolas and Collin Kurre, Co-Chairs
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Agenda

1. **Welcome and Introduction**
2. Update: ICANN Org's ongoing Human Rights Impact Assessment (HRIA) — *Ergys Ramaj*
3. Update: HR Bylaw and CCWG-Accountability Work Stream 2
4. Discussion: Implementing the Human Rights Bylaw in SOs/Acs
   a. Review of the FoI & Considerations Document
   b. Lessons learned from designing HRIAs for infrastructure providers
5. Presentation: Human Rights in PDPs — *Vidushi Marda*
6. Discussion: Future research possibilities
7. AOB

ICANN POLICIES AND HUMAN RIGHTS

ICANN

The Internet Corporation for Assigned Names and Numbers coorinates the policy making and distribution of domain names and IP numbers. It therefore is often referred to as the "telephone book of the Internet."
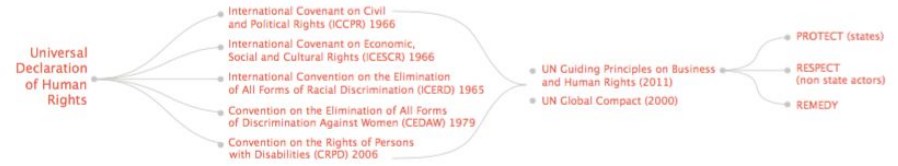
ICANN GLOSSARY

DANE: DNS-based Authentication of Named Entities
DCND: Defined conditions of nondisclosure
DIDP: Documentary Information Disclosure Policy
DNSSEC: Domain Name System Security Extensions
GAC: Governmental Advisory Committee
GNSO: Generic Names Supporting Organization
gTLD: Generic top-level domain
IDNs: Internationalized Domain Names
IGOs: Inter-Governmental Organisations
INGOs: International Non-Governmental Organizations
IRP: Independent Review Panel
PDP: Policy Development Process
RPMs: Rights Protection Mechanism (as related to Intellectual Property Rights)
RDAP: Registration data access protocol
WHOIS: an Internet service that provides information about a domain name or IP address

Scoping the relation between ICANN and Human Rights

This is a preliminary scoping in anticipation of the Human Rights Impact Assessment that will be carried out by the ICANN organization in 2018.

This illustration has been produced by the Cross-Community Working Party on ICANN and Human Rights (**CCWP-HR**).

Find more information and join the mailing list by visitng icannhumanrights.net.

HUMAN RIGHTS PRINCIPLES

INHERENT: human rights derive from the humanity of each person.

UNIVERSAL: all human beings have the same human rights.

INALIENABLE: human rights cannot be given up.

INDIVISIBLE: there are no conflicts between rights and no priorities among rights. There will be situations or occasions where rights must be balanced and prudent decisions taken about how all rights can best be protected and promoted.

INTERDEPENDENT AND INTERRELATED: the enjoyment and fulfilment of any right depends on the enjoyment and fulfilment of other rights.

EQUALITY AND NON-DISCRIMINATION: all individuals are equal as human beings and by virtue of the inherent dignity of each human person.

PARTICIPATION AND INCLUSION: all people have the right to participate in and access information related to decision-making processes affecting them.

ACCOUNTABILITY AND RULE OF LAW: States and other duty-bearers are answerable for the observance of human rights.

TREATIES

Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (ICCPR) 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979
- Convention on the Rights of Persons with Disabilities (CRPD) 2006

GUIDELINES

- UN Guiding Principles on Business and Human Rights (2011)
- UN Global Compact (2000)
  - PROTECT (states)
  - RESPECT (non state actors)
  - REMEDY

RIGHTS INVOLVED — THEME — ICANN POLICY OR PROCESS

RIGHT TO PRIVACY
- 2013 Registrar Accreditation Agreement
  - Data escrow provider financial support
  - WHOIS accuracy specification requirement

RIGHT TO FREEDOM OF ASSOCIATION
- WHOIS
  - Thick WHOIS implementation review team
  - Next generation gTLD registration directory service
  - RDAP changes and privacy
- New gTLD subsequent procedures WG
  - Applicant guidebook — Community based TLD

ECONOMIC, SOCIAL AND CULTURAL RIGHTS
- New gTLD subsequent procedures WG
  - Application fees
  - Registrar accreditation process & insurance requirements
  - GNSO new gTLD auctions proceeds drafting team
- IP addresses
  - Coordination and distribution of IP addresses
- Free and fair use of domain names
  - The right to use all words and names in domain names

RIGHT TO FREEDOM OF EXPRESSION
- New gTLD subsequent procedures WG
  - Content-based gTLD String Evaluations
  - Applicant guidebook — Sensitive strings / Community based TLD
- Internationalized Domain Names
  - Implementation of Internationalized Domain Names
- Rights Protection Mechanisms
  - Review of protection IGO/NGO names in all gTLDs
  - Review of curative rights protections in IGO/INGOs in gTLDs
  - New gTLDs subsequent round WG
  - PDP to review RPMs in all gTLDs
- Documentary Information Disclosure Policy
  - Defined conditions of non-disclosure

PARTICIPATION, INCLUSION, EQUALITY AND NON-DISCRIMINATION
- Protection of rights to fair and equal treatment
  - Awareness of Ombuds office for complaint

RIGHT TO SECURITY
- DNSSEC
  - Implementation of DNSSEC
  - Implementation of DANE

DUE PROCESS
- PDP procedure
  - GNSO PDP improvements discussion group
- GAC early warning
- Reconsideration Request
  - Effect of failure and the use of the Ombudsman
- IRP Process
- All Dispute Resolution processes within ICANN
  - Parties made aware of Ombuds and Complaints Offices
- Documentary Information Disclosure Policy
  - Documentary Information Disclosure Policy requests

Cross-Community Working Party on ICANN and Human Rights

Objectives, Responsibilities, and Scope of Work:

1. **Map HR effects** of ICANN policies, procedures, and operations

2. **Provide a forum** for related discussions

3. **Research** ways to better harmonize ICANN's policies and procedures with HR standards, such as UNGPs

4. **Provide** information, suggestions, and recommendations to SOs, ACs, and broader community

5. **Propose** procedures and mechanisms on how chartering organizations can fulfill HR bylaw

Cross-Community Working Party on ICANN and Human Rights

Other Past Work:

- *Paper*: ICANN's Procedures and Policies in Light of Human Rights, Fundamental Freedoms, and Democratic Values (2014)

- *Paper*: ICANN's Corporate Responsibility to Respect Human Rights (2015)

- *Paper*: Potential Human Rights Issues Arising from gTLD Subsequent Procedures (2016)

- *Draft*: Initial Sketch for Human Rights Impact Assessment Model for GNSO PDPs (*Presented to the GAC HRIL at ICANN60*)

ICANN Organization's ongoing Human Rights Impact Assessment

- Objectives and Scope of Work

- Vendor Selection Process

- Timeline and Ongoing Efforts

- Impact Assessment Report

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ICANN Bylaws: Human Rights Core Value

1.2.(b)(viii) "Within the scope of its Mission and other Core Values, **respecting internationally recognized human rights as required by applicable law.** This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties."

Interim Human Rights Core Value
CAVEAT

27.2.(a) "The Core Value set forth in Section 1.2(b)(viii) shall have **no force or effect unless and until a framework of interpretation for human rights ("FOI-HR")** is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.."

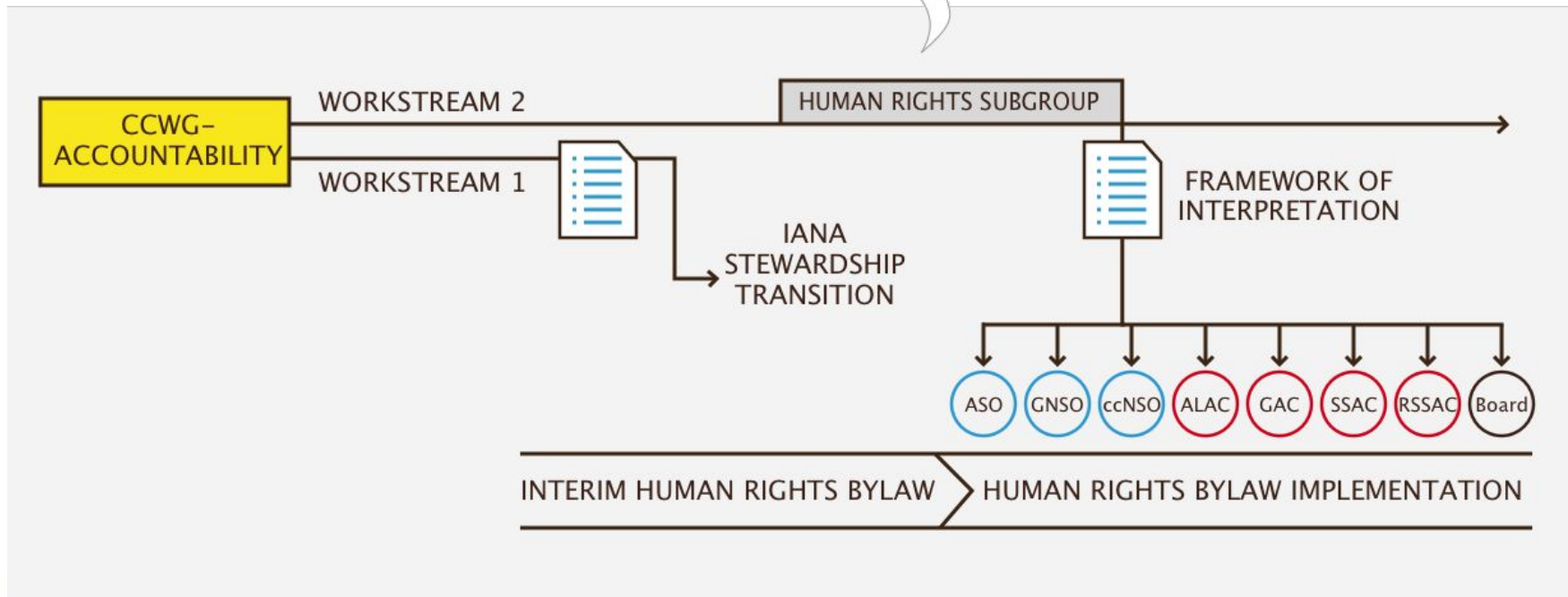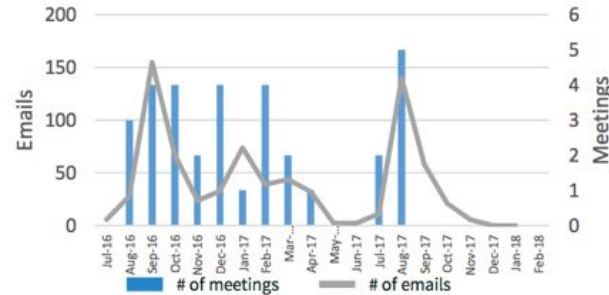# Cross-Community Working Group on Enhancing ICANN's Accountability – Work Stream 2

- SO/AC Accountability
- Human Rights
- Transparency
- Guidelines for Good Faith Conduct

- Staff Accountability
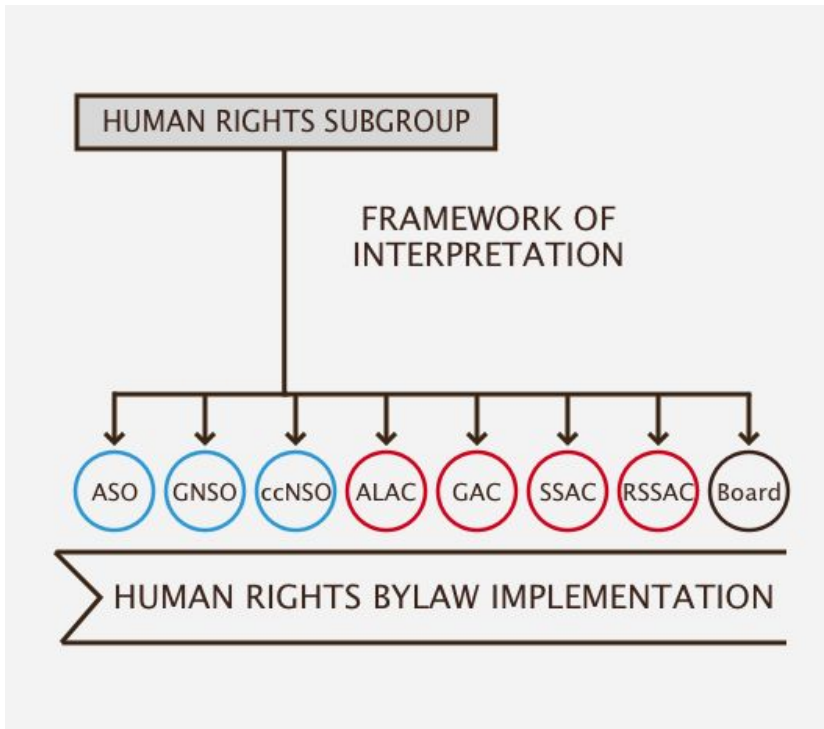- Diversity
- Ombuds Office
- Jurisdiction
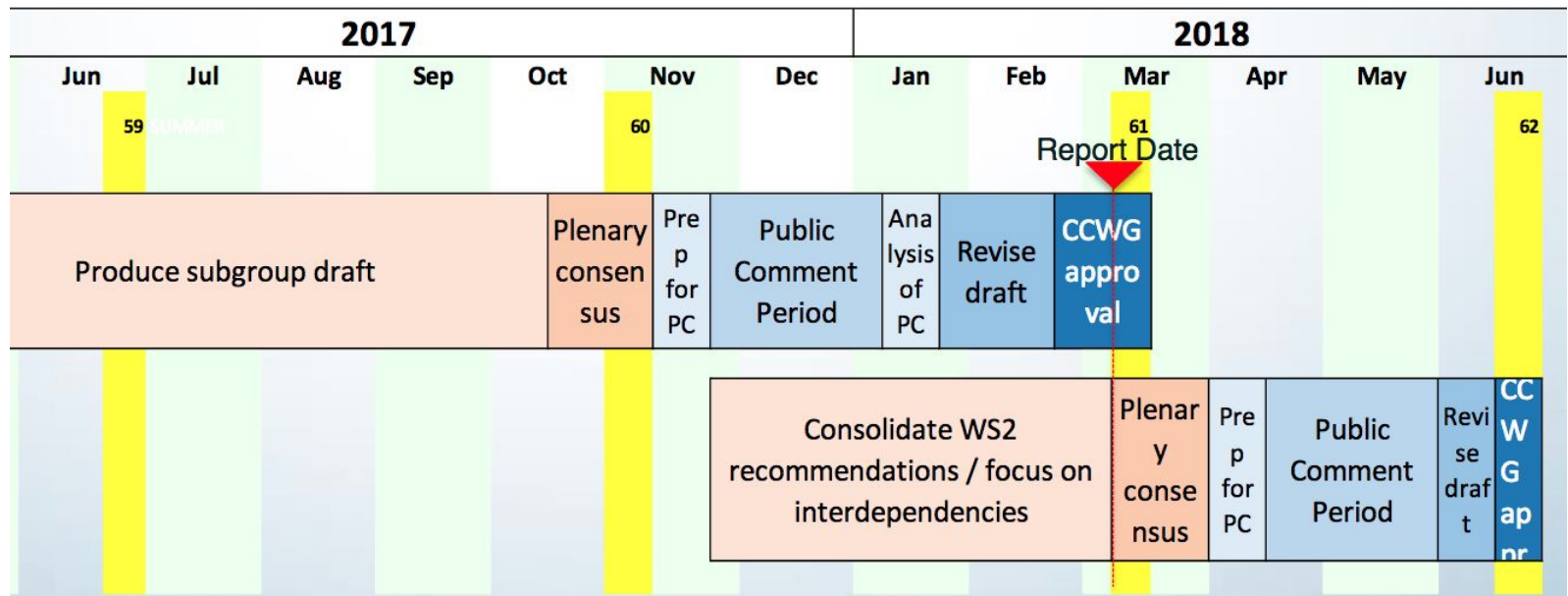
CCWG-Acc Human Rights Subgroup

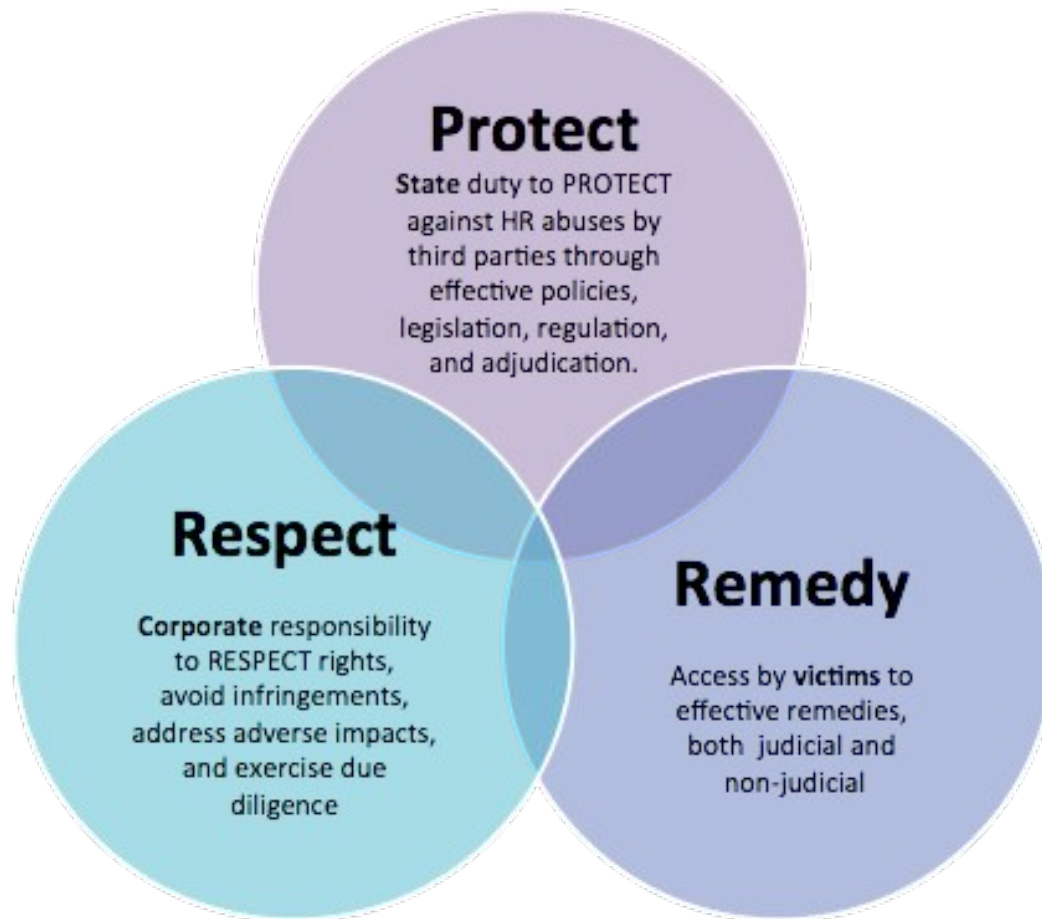# Human Rights Framework of Interpretation: Implementing the Core Value

- Up to each SO/AC and ICANN org to develop their own policies and frameworks to fulfill the Core Value

- UNGPs could be useful guide

- SOs could consider defining and incorporating Human Rights Impact Assessments (HRIAs) into respective PDPs

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UN Guiding Principles on Business and Human Rights
(UNGPs)

Protect
State duty to PROTECT against HR abuses by third parties through effective policies, legislation, regulation, and adjudication.

Respect
Corporate responsibility to RESPECT rights, avoid infringements, address adverse impacts, and exercise due diligence

Remedy
Access by **victims** to effective remedies, both judicial and non-judicial

Work on Human Rights Impact Assessments for Internet Infrastructure Providers

D. Registries as Providers of TLD and Other Domain Services (in-house or outsourced)

D.1 Acquiring TLDs
Right to freedom of expression, right to privacy, freedom of association, freedom from discrimination

D.1.1 Agreements with ICANN

Human rights impact scenario

The agreement between the registry and ICANN does not cover how the registry should align itself with human rights, including on issues such as freedom of expression and right to privacy, and in relation to the registry's terms and conditions.

Probability (click below to choose option)	Describe key impacts and who is impacted (write text)				Assess numbers impacted (click to choose option)

Indicators		YES	NO	F/A	N/A	COMMENTS AND DOCUMENTATION
a	The agreement with ICANN includes a commitment to respect international human rights.					
b	The agreement with ICANN includes a commitment to respect the right to privacy of registrars and registrants.					
c	Information added to the public WHOIS registry is in line with local and international law as well as human rights.					
d	Information added to the public WHOIS registry can be minimized to improve registrants privacy.					
e	The agreement with ICANN includes a commitment to respect the right to freedom of expression of registrars and registrants.					
f	The agreement with ICANN includes a commitment to respect the right to freedom of association of registrars and registrants.					
g	The agreement with ICANN includes a commitment to ensure the right to freedom from discrimination of registrars and registrants.					

How will it happen? Where can we help?
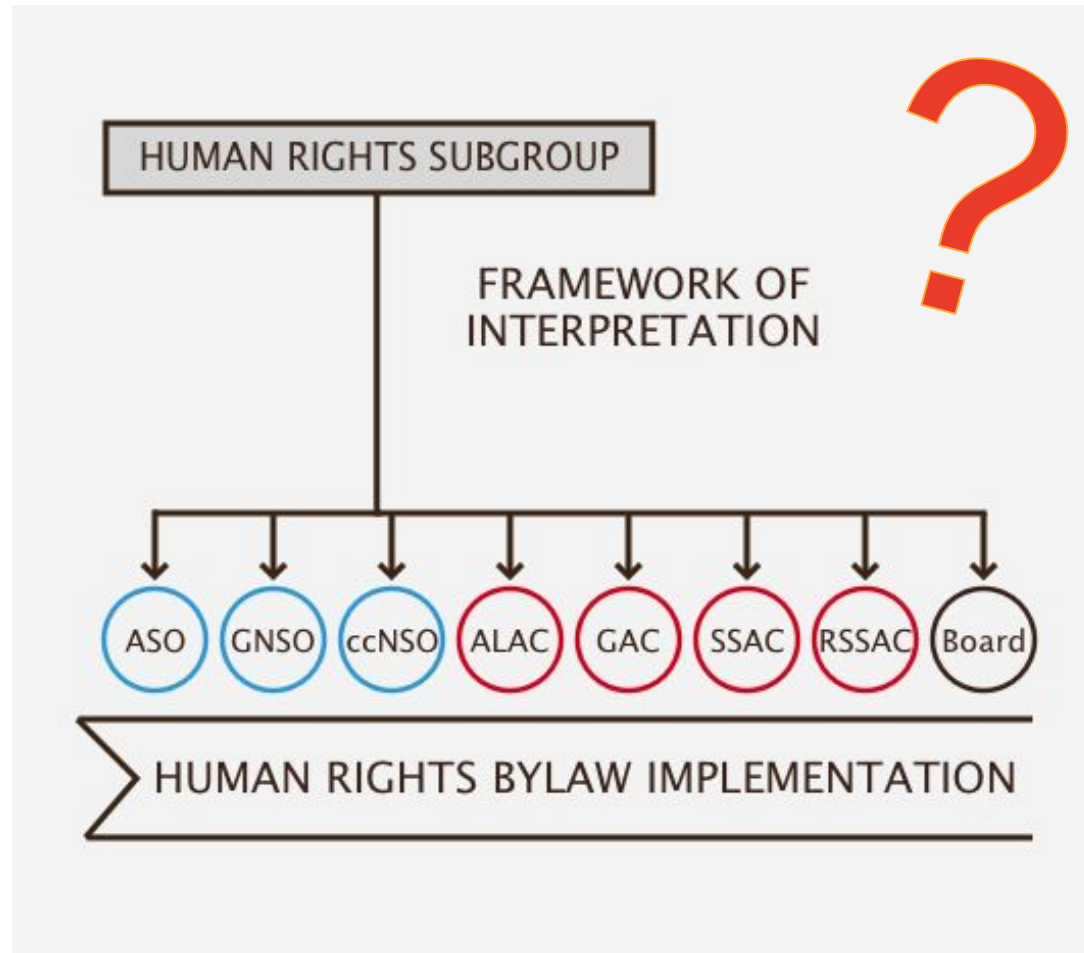
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Active Projects at the GNSO

- PDP IGO-INGO Access to Curative Rights Protection Mechanisms
- PDP Inter Registrar Transfer Policy-C Working Group
- PDP gTLD Registration Data Services
- PDP Protection of IGO & INGO Identifiers in all gTLDs
- PDP Privacy and Proxy Services Accreditation Issues Working Group
- PDP Thick WHOIS
- PDP Translation and Transliteration of Contact Information
- PDP Review of all Rights Protection Mechanisms in all gTLDs
- PDP new gTLD Subsequent Procedures

PDP Review of all Rights Protection Mechanisms in all gTLDs

- Charter

- Human rights issues arising out of this PDP include FoE, Privacy, Procedural Due Process. Areas of focus include:

    - Creation and allotment of new gTLDs (eg. .gcc, .africa, .islam)
    - Trademark Clearing House & Sunrise Periods
    - Ineligible or Prohibited words
    - gTLD objection procedure

PDP new gTLD Subsequent Procedures

- Freedom of Expression
    - Content based gTLD String Evaluations
    - Community, trademark, and public interest obligations to gTLD strings
    - Extent of reservation rights granted to INGOs
    - Censorship

- Procedural Fairness
    - Base Registry Contract
    - Trademark Clearing House

- Diversity, Access
    - Global inequality in allotment
    - Cultural relativism of 'offensive' names
    - First Come First Serve Policy

PDP gTLD Registration Data Services

- Users and Purposes

- Gated Access

- Data Accuracy

- Data Elements

- Privacy

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Future Research in the CCWP-HR

- Ongoing due diligence: ICANN's effects on human rights

- Charting the decision-making processes of each SO and AC to make suggestions about how an HRIA or other compliance mechanism could be incorporated

- Tracking effectiveness of remedy and due process measures through process analysis and case studies (UDPR/URS, complaints office, and ombudsman)
    - Potential focus on 2016 Anti-Harassment Policy
    - *Has such work been done?*

- **What else?**

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Join or follow the CCWP's work

Visit our website: icannhumanrights.net

Post your questions and ideas to the list:
cc-humanrights@icann.org

Or get in touch directly:
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Thank you!