

Comments on the Proposed ICANN Community Anti-Harassment Policy  
By  
The Centre for Internet and Society<sup>1</sup>

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We at the Centre for Internet and Society (“CIS”) are grateful for the opportunity to comment on the proposed ICANN Community Anti-Harassment Policy (“Policy”). We provide our specific comments to the Policy below, in three sections. The first section addresses the *Terms of Participation*, the second deals with the *Reporting and Complaint Procedure*, and the third places on record our observations on questions and issues for further consideration which have not been covered by the Policy.

I. On the *Terms of Participation*

1. **Defining “Specified Characteristics”**

The attempt to provide an exhaustive definition of “Specified Characteristics” results in its meaning being unclear and exclusionary. For instance, defining ‘medical condition’ as only ‘cancer and genetic characteristics’ and ‘sex’ as ‘pregnancy, childbirth, medical conditions related to pregnancy or childbirth, gender, gender identity and gender expression’ is not only limiting but also confusing. Similarly, gender identity and expression, maternal status and health, and biological sex need individual emphasis and should not be clubbed under ‘sex’.<sup>2</sup> ICANN must adopt an inclusive and concise definition instead.

2. **Inappropriate conduct**

CIS strongly supports the phrase “including, but not limited to” that is followed by a bulleted list of inappropriate conduct. However, this list should be expanded to acknowledge unwelcome behaviour and comments that may not be sexual in nature, but still constitute harassment.

The WikiConference India 2016 Code of Conduct serves as a good example. *Inter alia*, its definition of harassment includes comments relating to (a) mental illness, (b) Neurotypicality, (c) body size, (d) body type; (e) a person’s lifestyle choices and practices, including those related to food, health, drugs, parenting, and employment; (f) discriminatory jokes and other forms of ‘humour’; and (g) threats of physical harm or

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<sup>1</sup> This comment has been prepared by (alphabetically): Padma Venkataraman, Rohini Lakshané, Sampada Nayak and Vidushi Marda. Special thanks to Amber Sinha for his feedback.

<sup>2</sup> (1), ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 1. <https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.

violence and death threats.<sup>3</sup> The IETF policy also accounts for instances of non-sexual harassment such as ‘unwelcome hostile or intimidating behaviour’.<sup>4</sup>

Within the existing list, CIS recommends deleting the second half of point 4, so that it simply reads, “Violating someone’s personal space”. This point in its current form is not an appropriate example as it suggests that only a *repeated violation* of ‘personal space’ is harassment.<sup>5</sup>

### 3. Consent

The word “consent” is entirely missing from the draft policy even though the deciding factor in the “appropriateness” of an act or conduct is active and explicit consent to the act by both/ all individuals involved. UNESCO’s Anti Harassment policy, for instance, states that for conduct to come within the definition of harassment, it “*must be unwelcome, i.e. unsolicited and regarded as offensive or undesirable by the victim.*”<sup>6</sup> A similar provision must be included in ICANN’s proposed Policy.

### 4. Need for Clarity of Communication Platforms

The IETF’s Anti-Harassment Policy includes, ‘IETF meetings, virtual meetings, social events, or on mailing lists’ under its ambit.<sup>7</sup> Similarly, WikiConference India 2016 Code of Conduct specifically mentions the scope of the code as ‘main event, pre-conference and post-conference events, auxiliary tracks to the main event such as fireside chats, and online components of the conference such as video conferences, IRC rooms, and mailing lists.’<sup>8</sup>

The current Policy fails to specify instances of face-to-face and online communications. It may be amended to include (but not be limited by) interactions during meetings, mailing list conversations and chats during ICANN calls”.<sup>9</sup>

## II. On the Reporting and Complaint Procedure

### 1. Perils of a single point of contact

The policy fails to account for a body of persons (as is provided for in the IETF policy) for

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<sup>3</sup> WikiConference India 2016, Code of Conduct.

[https://meta.wikimedia.org/wiki/WikiConference\\_India\\_2016/Code\\_of\\_Conduct#Code\\_of\\_Conduct](https://meta.wikimedia.org/wiki/WikiConference_India_2016/Code_of_Conduct#Code_of_Conduct).

<sup>4</sup> ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 1. <https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>; <https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html>.

<sup>5</sup> (2) ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 1. <https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.

<sup>6</sup> 12, UNESCO Anti-Harassment Policy, [http://www.un.org/womenwatch/osagi/UN\\_system\\_policies/\(UNESCO\)Anti-harassment\\_Policy.pdf](http://www.un.org/womenwatch/osagi/UN_system_policies/(UNESCO)Anti-harassment_Policy.pdf).

<sup>7</sup> <https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html>

<sup>8</sup> [https://meta.wikimedia.org/wiki/WikiConference\\_India\\_2016/Code\\_of\\_Conduct#Redressal\\_policy\\_and\\_mechanism\\_for\\_resolution](https://meta.wikimedia.org/wiki/WikiConference_India_2016/Code_of_Conduct#Redressal_policy_and_mechanism_for_resolution).

<sup>9</sup> (1), ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 1. <https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.

the redressal of harassment complaints.<sup>10</sup> Instead, its complaint procedure lies with a single point of contact. This hinders efforts to ensure independence, neutrality, approachability and diversity in representation in the Office of the Ombudsperson.<sup>11</sup> The use of '*as appropriate in the sole discretion of the Ombudsperson*'<sup>12</sup> affords certain liberties to the Ombudsperson in the interpretation of a situation and implementation of basic procedures (such as communication with the plaintiff to clarify the facts, inquiries of the accused, communicating with witnesses, questioning the credibility of parties, etc.), providing opportunities for bias.<sup>13</sup>

CIS suggests that a diverse set of individuals in terms of gender, geography and language with members of 'different socially under-represented groups' constitute an anti-harassment committee, in order to be able to conduct a fair and impartial hearing. In addition to the IETF, a similar provision has been followed by WikiConference India as well.<sup>14</sup>

## 2. Registration of Complaint

The provision for an informal resolution of a harassment issue is problematic as it could potentially lead to negative consequences for the complainant such as being subject to further oppression, intimidation, abuse and social repercussions within the ICANN community from individuals and groups (even apart from the person/group against whom the complaint is made).

The policy should ensure confidentiality for the complainant by providing, for example, an email address which the complainant can use to communicate securely and privately without reasonable fear of being outed.<sup>15</sup> Further, the policy should address the need for a safe and private space for discussion of the complaint with the complainant, and also ensure that the investigation proceeds keeping intact the safety, dignity and respect of everyone involved.<sup>16</sup> This would necessitate procedure and redressal to be clearly defined, which the policy in its current form does not achieve.

## 3. Remedial Action, Appeal Process

The Ombudsperson's discretion in the determination of remedial action is detrimental to

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<sup>10</sup> <https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html>.

<sup>11</sup> <https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html>.

<sup>12</sup> (2), Reporting and Complaint Procedure, ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 2.

<https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.

<sup>13</sup> (2); (3), Reporting and Complaint Procedure, ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 2.

<https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.

<sup>14</sup>[https://meta.wikimedia.org/wiki/WikiConference\\_India\\_2016/Code\\_of\\_Conduct#Redressal\\_policy\\_and\\_mechanism\\_for\\_resolution](https://meta.wikimedia.org/wiki/WikiConference_India_2016/Code_of_Conduct#Redressal_policy_and_mechanism_for_resolution).

<sup>15</sup> [https://meta.wikimedia.org/wiki/Grants:Friendly\\_Space\\_Policies#Handling\\_harassment](https://meta.wikimedia.org/wiki/Grants:Friendly_Space_Policies#Handling_harassment).

<sup>16</sup>[https://meta.wikimedia.org/wiki/WikiConference\\_India\\_2016/Code\\_of\\_Conduct#Redressal\\_policy\\_and\\_mechanism\\_for\\_resolution](https://meta.wikimedia.org/wiki/WikiConference_India_2016/Code_of_Conduct#Redressal_policy_and_mechanism_for_resolution).

transparency and accountability.<sup>17</sup> The remedial actions specified, though not exhaustive, are inadequate considering the absence of any appeal process.<sup>18</sup>

### *III. Issues for further consideration not covered by the Policy*

1. The Policy in its current form lacks provisions for ensuring privacy and confidentiality of the complainant as well as interim relief while the Ombudsperson is looking into the complaint.
2. The Policy lacks mechanisms for free and fair redressal of a complaint by factoring in evidence or statements from eye-witness and instead relies solely on the judgement and discretion of a singular ombudsman.
3. The Policy must include mechanisms for ensuring compliance from those who have been found to violate the code of conduct, including but not limited to expulsion from the event and temporary or permanent ban from the event or across all online and offline ICANN places such a chat rooms and mailing lists.
4. Further, the Policy must address the following questions:
  - a. Are oral complaints acceptable or does it necessarily have to be in written form such as an email?
  - b. Would reports by witnesses/bystanders be accepted? Under what circumstances and what would the procedure be?
  - c. In the event of a complaint against the Ombudsman (or, following possible amendments, against a member of an anti harassment committee) what is the available recourse?
  - d. Can the ombudsman take suo moto cognisance of a potential violation of the policy or would she act only when the complainant files a written complaint?
5. ICANN must make the Policy binding for all participants of all events and meetings happening in all physical and online spaces.
6. ICANN must also make the policy available in different major languages of ICANN.

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<sup>17</sup> (3), Reporting and Complaint Procedure, ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 2.  
<https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.

<sup>18</sup> (4), Reporting and Complaint Procedure, ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, 2.  
<https://www.icann.org/en/system/files/files/community-anti-harassment-policy-draft-31oct16-en.pdf>.