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

Note: There is the potential to update the name to highlight what it attempts to promote (for example, ICANN Community Dignity and Respect Policy and Terms of Participation and Harassment Complaint Procedure). Community input via the Public Comment Proceeding is encouraged on the name.

Adopted on XX [Month] 2024

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ICANN is a unique multistakeholder environment. The ICANN community's strength is that it is composed of participants from numerous and varied backgrounds, societal values, and cultural norms. In the ICANN community, all participants should feel welcomed, appreciated, and valued; all participants should interact with others without prejudice or bias, all should treat others without discrimination or injustice, and all should assume others are acting with integrity.

Participants have a right to engage in the ICANN community free from behavior that demeans, humiliates, or denigrates. Every person has the responsibility to contribute to a positive environment by treating others with dignity and respect.

A guiding goal of ICANN's Community Dignity and Respect Policy and Terms of Participation and Harassment Complaint Procedure (Policy) is to emphasize, encourage, and promote the spirit of mutual respect expected from all members of the ICANN community. While society's values and norms have and will continue to evolve, such respect is timeless and is the guiding foundation of this Policy. This Policy is not intended to impede or inhibit free speech.

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This Policy applies to all participants in the ICANN multistakeholder processes as indicated below.

I. Policy

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 and dignified manner, irrespective of Specified Characteristics so that individuals of all backgrounds and cultures are made to feel welcome. This applies in all interactions, including in face-to-face and on-line communications. Specified Characteristics means, but is not limited to: age, ancestry, ethnicity, physical or mental disability, genetic information,

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medical condition, marital status, national origin, race, religion, sex (which includes, among other things, gender, gender identity and gender expression), sexual orientation, citizenship, primary language, immigration status, socioeconomic status, pregnancy, childbirth, or medical conditions related to pregnancy.

2. **Refrain from harassment of any type.** Harassing conduct or commentary may take many forms, including, but not limited to, verbal acts, graphic depictions, written statements, physical conduct, and more. Note that harassing conduct may be made via various methods, including, in person, over the phone, via the Internet (in any of its applications, such as via email, Zoom, etc.). See the definition below.

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3. **Refrain from retaliation.** Retaliation is strictly forbidden 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.

II. Definition

1. **Harassment.** Harassment is unwelcome and/or non-consensual hostile or intimidating conduct.

2. **Intent is not a factor in determining harassment.** 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.

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3. **Examples of harassment.** The types of inappropriate conduct that are prohibited by this Policy include, but are not limited to:

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- Inappropriate touching, including, but not limited to, grabbing, groping, kissing, fondling, hugging, massaging, patting, pinching, rubbing, stroking someone's hair, brushing against another's body, or touching that the actor may not have intended to be sexually suggestive but which constitutes uninvited physical contact.

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- Physical assault, or threats.

- Sexual advances, requests for sexual favors, repeated requests for dates, or unwanted communications of a romantic nature, after the individual receiving them indicates that they do not wish to receive such communication or requests.

- Humiliation, ridicule or mockery, insults or put-downs.

- Use of offensive language.

- Violating someone's "personal space" after being told you are doing so.

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- Leering, following or stalking, or suggestive whistling.
- Gesturing in a sexually suggestive or vulgar 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, graphic, or offensive comments, innuendos, or jokes.
- Slurs, epithets, or name calling.
- Use or distribution of offensive objects or images, including but not limited to, sexual imagery in public presentations and displays.
- Use or displays of offensive objects or images, including but not limited to, sexual imagery on a computer or other personal items in public settings that may be visible to others.
- Harassing photography or recordings.

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III. Support

A. Raising a Concern

Note that options are flexible and that complainants are not required to first try informal resolution, nor are they required to make a formal complaint.

Advice and guidance are always available from the Ombuds, whether someone wants to raise a complaint formally or not.

There are multiple options to address behavior:

1. Direct communication (with or without support);
2. Ombuds-assisted action (including assisted direct or indirect communication, such as mediation or shuttle mediation, referrals, etc.); or
3. Formal complaint to Ombuds.

For formal complaints to the Ombuds, the process is summarized as follows:

- I. Review of complaint with the following potential outcomes:
 - a. Complainant drops or wants to return back to Ombuds-assisted mediation;
 - b. Ombuds determines insufficient grounds to investigate; or
 - c. Ombuds determines sufficient grounds to investigate.
- II. Investigation:
 - a. Complaint upheld; or
 - b. Complaint not upheld.

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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.¶

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III. Remedial action (if Complaint upheld).

B. Harassment Complaint Procedure

The following reporting and complaint procedure is available to anyone in the Community who believes they have identified inappropriate behavior toward themselves or others.

1. The individual who believes they have identified inappropriate behavior (complainant) toward himself or others may: (i) communicate with the person(s) responsible and attempt to resolve the issue informally; and/or (ii) promptly report to the Ombuds the facts giving rise to a belief that inappropriate behavior has occurred and cooperate fully in the ensuing investigation of the complaint. If reported to the Ombuds, complaints should be submitted as soon as possible after the incident has occurred and preferably in writing.
2. Upon receiving a complaint, the Ombuds will acknowledge receipt as soon as practicable. The Ombuds will promptly conduct a procedural review of the complaint to determine whether the matter is within the jurisdiction of the Ombuds Office under this Policy, and provide notice to the reporter of the procedural determination as soon as practicable. If the Ombuds determines that a complaint is not within their jurisdiction, the complainant will be notified of the reasons for this determination, and in which case, the procedural determination may include recommendations of other remedies or means of resolving the concern as appropriate.
3. If the Ombuds receives a complaint from an ICANN staff member concerning behavior by a community member toward ICANN staff, the Ombuds should refer the complainant to follow the internal complaint process provided by ICANN for staff complaints. ICANN may file a complaint under this Policy on behalf of an ICANN staff member as part of the organization's internal complaints.
4. If the Ombuds finds a complaint to be within the jurisdiction of the Ombuds Office, the complaint will be investigated to determine whether there is a reasonable basis for believing that the alleged behavior is a violation of this Policy. To obtain an understanding of the facts and allegations, the investigation will include the following, as appropriate at the sole discretion of the Ombuds: (i) communication with the complainant to clarify the facts and allegations giving rise to the complaint; (ii) inquiries of the person who is the subject of the complaint (respondent) to obtain a response to the complaint if, in the Ombuds' discretion, the complainant has provided sufficient facts to support the allegation that inappropriate and unwanted harassment behavior has occurred; and (iii) communication with other percipient witnesses, and review of documentary evidence, if any, and if appropriate.

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5. The Ombuds will provide regular updates to the complainant and respondent during the interview and evaluation process. If the complaint is open to third parties, then the regular updates would go to the third party and the respondent but not the victim. The length of the evaluation process varies depending on the circumstances. The Ombuds will determine whether a violation of this Policy has occurred based on the information collected, reviewed, and analyzed during the evaluation and investigation. The Ombuds will communicate the results of the investigation to the complainant and the respondent upon conclusion of the Ombuds' evaluation. No "corroboration" is required to support a finding by the Ombuds; the Ombuds will consider the credibility of each party in making a determination.
6. If the Ombuds determines that a violation of the Policy has occurred and if practicable, the Ombuds will attempt to resolve the matter informally before addressing the matter in a more formal matter.
7. If the matter cannot be resolved informally, the Ombuds will determine what remedial action, if any, is appropriate in light of the findings of the evaluation. The appropriate remedial action will depend on these factors:
- a. the severity, frequency, and pervasiveness of the conduct;
 - b. prior complaints made by the complainant;
 - c. prior complaints made by against the respondent; and
 - d. the quality of the evidence (e.g., firsthand knowledge, witness credibility, evidence).
8. Remedial action may include, but is not limited to, prohibiting any individual responsible for inappropriate behavior from further participation in the ICANN process (either in perpetuity or 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.
9. If a respondent refuses to comply with the remedial action identified by the Ombuds, the Ombuds will refer the matter to the ICANN Board with recommendations for consideration and action. The referral to the Board will include a discussion of the facts, claims, findings, and efforts to resolve the matter informally, and recommendation(s) of remedial action.
10. Upon a receipt of a referral from the Ombuds, the ICANN Board will evaluate the Ombuds' findings, request additional information if needed, and decide whether the Ombuds' recommended remedial action, or alternative remedial actions, are appropriate. If warranted, the Board will then impose such remedial action(s) it deems appropriate.

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11. The reporting and complaint procedure will be handled in a manner to ensure confidentiality to the complainant as well as the respondent, to the extent feasible.

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