

Tucows Public Comment: Proposed Revisions to Community Anti-Harassment Policy

19 December 2024

Tucows appreciates the opportunity to comment on the proposed revisions to ICANN's Community Anti-Harassment Policy. This is an important revision and we commend the ICANN Board's Anti-Harassment Working Group for making progress on this issue.

Personal safety at ICANN is a matter that Tucows cares deeply about both for our own employees going to ICANN events and for all participants at ICANN events. One cannot properly achieve professional goals and advance policy work if one is not fully able to participate.

Areas of concern with the current Policy

The current anti-Harassment Policy does not include ICANN Staff, leaving them with notably less protection and recourse than other ICANN Community members have. ICANN Staff participate just as much—if not more!—at ICANN events and are just as much members of the ICANN Community as any other participant. They deserve at least the same amount of protection as everyone else does.

Comments on the new Policy

Tucows is pleased to see a statement of expectations confirming that participants must interact without bias or prejudice, treat others without discrimination or injustice, and assume that others act with integrity.

These principles foster a safe and welcoming environment where a diverse group of people can interact.

Definition of harassment

The definition of "harassment" (*"Harassment is unwelcome and/or non-consensual hostile or intimidating conduct."*) seems to be limited by the terms "hostile or intimidating"; this is problematic as harassing behaviour could be conducted in an apparently-cordial manner and the victim may not actually feel intimidated but the

conduct could still be unwelcome and non-consensual, as well as inappropriate, unprofessional, and discriminatory. It is not clear if this would meet the definition.

The examples provided do seem to cover this type of scenario (e.g. “*Lewd, graphic, or offensive comments, innuendos, or jokes*”), as does the statement that intent is not a factor, nor is repetition or frequency of the behaviour, in determining whether an action constitutes harassment. We recommend clarifying that “Harassment is conduct that is unwelcome or that is non-consensual, hostile, and/or intimidating.”

ICANN should consider modifying its definition to include situations that are problematic even without blatant hostility or intimidation.

Protections for ICANN Staff

The draft policy states “*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.*”

ICANN Staff should be as protected under this Policy as every other member of the ICANN Community; they should have the ability to bring concerns to the Ombudsperson. It is appropriate to also have an internal process to address issues of harassment or other inappropriate behaviour between or among ICANN staff members—every company that sends staff to ICANN events has such a policy—but ICANN Staff must also be protected by this Community Anti-Harassment Policy, regardless of the alleged perpetrator. Just as other Community members are protected by both this Policy and their own corporate anti-harassment policies, so too should ICANN Staff be protected. It could be argued that ICANN Staff are the *most* deserving of the impartial support of the Ombudsperson. Finally, it is inappropriate for ICANN Org to claim the right to make a report that an individual ICANN Staff member is not allowed to make.

Updates to the complainant and third parties

§5 of the complaints procedure indicates that “*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.*” It seems very odd that the victim would not receive updates and confusing for them to be referred to as “victim” instead of “complainant” as in the rest of the Policy.

Perhaps this would make more sense if it were clear what it means for a complaint to be open to third parties; does it mean that they can “sign on” to a complaint? Would they be updated about the issue without being directly affected? Does this section instead intend to cover complaints raised by third parties about behaviour they witnessed other parties engaging in?

The role of third parties and the information provided to complainants should be clarified and updated before this Policy is finalized.

Role of the Board and Ombuds

The Ombuds should be the final decisionmaker. There may be circumstances where the Ombuds will find it appropriate to coordinate with other parties to confirm their decision but the Ombuds’ decision must be final.

If a respondent does not comply with a decision, the Board should *enforce* the Ombuds’ decision; that is not the same as the Ombuds “referring” the matter to the Board. The Ombuds should have the complete backing and trust of the Board.

There are some open questions: What can a complainant do if they believe the Ombuds did not properly or fully consider the situation? What can a respondent do if they believe they were not fairly treated?

There should not be any opportunity to end-run the Ombuds’ decisions; the Board should support the Ombuds and enforce their decisions without being told or asked to do so. The options available to complainants and respondents for situations where they believe the Policy did not sufficiently address the issue should be further considered.

Thank you,

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