COMMENTS OF THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE PROPOSED ICANN COMMUNITY ANTI-HARASSMENT POLICY

The Intellectual Property Constituency (IPC) of the GNSO appreciates the opportunity to comment on the Proposed ICANN Community Anti-Harassment Policy (the "Policy"). *See* https://www.icann.org/public-comments/anti-harassment-policy-2016-11-07-en. The IPC has included with this comment a redline of the Policy, marked to show revisions proposed by the IPC.

The IPC applauds the ICANN community for working to create a better, safer and more productive environment for all participants. While this policy is a great step in that direction, the IPC agrees with other members of the community that several key terms defining behavior in the Policy require further definition, clarification and context. Without further guidance or better language, the Policy may actually restrict participation and community-building by fear.

Some of these concerns can be addressed by clarifying, in Paragraph 2 of the Terms of Participation, that conduct or commentary must be "unwelcome." This change is set out in the IPC redline. Proper training and experience of the Ombud as well as providing multiple Ombuds who represent the diversity of the community may also help bridge cultural, gender and other differences.

Additional revisions can be found in the IPC proposed redline of the Policy, but the main points of concern are highlighted and further explained here:

- ICANN should change references to "inappropriate behavior" to "behavior that violates the Anti-Harassment Policy" throughout the language of the Policy. ICANN consists of many cultures and "inappropriate behavior" is a vague term if not linked to the Policy itself.
- ICANN should consider adding further clarifying language under Paragraph 2 of the Terms of Participation restricting non-sexual conduct that is offensive and creates a hostile environment.
- ICANN should consider and communicate in the policy that comments made in private conversations where others are within earshot may be sufficiently loud and/or intimidating so as to constitute harassment of bystanders in violation of this Policy.
- ICANN should consider further clarifying and highlighting the non-retaliation clause by adding a section in the Complaint Procedure in addition to the Terms of Participation.
- ICANN should consider including language about what may NOT constitute harassment in the context of policy-making discussions, and it should be made clear that this is not an exhaustive list. The IPC believes this may help limit complaints to the Ombud to serious issues of harassment.

- The IPC believes that it is very important that the Reporting and Complaint Procedure does NOT require an individual to approach the harasser as a condition of moving forward with the complaint. While this may be a desired first step, concerns for an individual's safety and even anonymity must be taken into account.
- ICANN must clarify that the Ombud will review and evaluate the complaint on a confidential basis.
- The Ombud MUST consult with the complainant before revealing the identity of the complainant, even to the individual who has engaged in the potentially problematic behavior.
- There must be a process by which individuals can appeal the Ombud's decision.
- ICANN should ensure that the Ombud has formal training in the investigation and disposition of harassment claims prior to implementation of the Policy.
- The IPC strongly encourages ICANN to consider providing multiple Ombuds to address concerns about gender and other cultural dynamics in relation to complaint procedures.

We hope that ICANN staff will continue its consultations with the community on this very important issue. The IPC looks forward to continuing to contribute, with the goal of increasing participation in ICANN activities by all groups.

Respectfully Submitted,

Intellectual Property Constituency

Attachment: IPC Redline of Community Anti-Harassment Policy