

# Registries Stakeholder Group Statement



Issue: **Global Public Interest Framework**

Date statement submitted: **21 October 2019**

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The Registries Stakeholder Group (RySG) appreciates the opportunity to provide feedback on the [Discussion Paper on Developing a Public Interest Framework](#) (“Discussion Paper”).

With the Global Public Interest (GPI) being identified as one of the Board’s FY19 priorities, we understand that previous efforts to define GPI have been extremely challenging. We appreciate the efforts the Board has put forth to attempt to establish a Framework to help it meet its commitments and provide the ICANN community with a tool for recognizing the GPI in our various streams of work. That said, the RySG has some concerns about the applicability and ultimate usefulness of this Framework. While we recognize the Board’s obligations with respect to the GPI, we do not fully understand how this kind of framework will meaningfully help the Board to meet those obligations, while still affording it the flexibility it needs in making decisions and upholding its fiduciary duties.

If the Board decides to move forward with this Framework, we ask that it gives due consideration to our concerns laid out below, and that it considers further developing and explaining the proposed use and application of this Framework, as well as any next steps to define GPI.

## **Concerns Regarding the Framework**

Our concerns around the Framework's impact on the Board's ability to meet its fiduciary duties are as follows:

1. ICANN’s definition or application of the GPI is subject to the circumstances at hand in any instance. The Board currently does a good job utilizing its understanding of GPI as expressed in the many resources developed by the community. In fact, the Board has what amounts to a ‘line-item veto’ that it exercises from time to time demonstrating its attention to such nuanced detail.

2. Furthermore, defining the GPI almost always involves a delicate balancing test (not unlike how the Bylaws require balancing of Core Values). As such, we caution that any pre-defined Framework should not be utilized to preempt or pre-determine the outcome of any bottom-up multistakeholder processes or the decisions that result from those processes. That would significantly restrict the Board's discretion and ability to assess the GPI impact on a case-by-case basis.

We understand this form of assessment is hard work for the Board, but it is essential. If this static Framework ended up being a pre-defined rubric that gets applied to the decision-making process, as opposed to an evaluative tool, it would have the potential to rein in the per-case analysis and seriously restrict the Board's deliberative process, thereby potentially inhibiting its ability to exercise its fiduciary responsibilities. Constructing a static framework for GPI, which is ever-changing, is a recipe for problems. More clarity around the Framework's potential application and use is vital before the Board moves forward.

## **Responses to Questions**

Our responses to the specific questions laid out in the Discussion Paper are included below:

*Question 1: What are your thoughts on the proposed framework approach? Do you have any suggestions for how it could be improved?*

Fundamentally, the RySG understands the difficulty of this task and the value of exploring different ways to tackle it. As noted above, we have some concerns about the Framework approach and strongly recommend more clarity around how it will be used and to which "decisions" it will be applied. If the Board decides to move forward with the Framework, we agree with the fundamental principle that it should be firmly grounded in ICANN's mission and Bylaws. As mentioned above, it should not preempt or be a part of the decision or policymaking process, but rather used as a tool to evaluate decisions made.

Additionally, the terms used in the Framework should be defined with precision unless their meaning is otherwise obvious in context.

*Question 2: What are your thoughts on the proposed approach for decisions in the ICANN ecosystem to be accompanied by a consideration of their impact on the global public interest (as well as an explanation regarding what is meant by the GPI in the specific case)?*

As stated above, the Board must clarify what "decisions in the ICANN ecosystem" refers to here. Are these decisions reached by the ICANN community through the

bottom-up multistakeholder process? Are they also decisions made by the ICANN Board, and if so, do those decisions constitute Board resolutions only, or other decisions taken by the Board as well?

If the Framework is applied to any decisions, it must be sufficiently flexible to account for the fact that different stakeholders in the ICANN process will naturally have different views on what constitutes GPI. Competing interests will still need to work within defined ICANN processes to reach consensus, and it will still ultimately be the ICANN Board's responsibility to determine whether varying ideas of what constitutes GPI are appropriately balanced.

*Question 3: How do you see this working for the Supporting Organization (SO), Advisory Committee (AC), constituency, group, review team, or cross-community working group (CCWG) to which you are contributing?*

Again, the Board must clarify what the intended applicability of this framework is. We also encourage the Board to build in a community review and evaluation period prior to any implementation of this Framework.

### **A Note on Timing**

Finally, the RySG would like to raise its concerns with the timeline laid out in the discussion paper. Given the complex nature of this subject, we do not believe that February 2020 is a realistic date to complete the establishment of this framework. We are unclear about how this particular effort is prioritized among the larger context of the multiple important initiatives taking place within the ICANN community, including the Evolving ICANN's MSM project, the still incomplete task of establishing an IRP Standing Panel, the ongoing ATRT3 review, and others. While we appreciate that the Board has identified this as an important and perhaps urgent subject to be addressing at this time, we urge the Board to consider whether this is actually the case in the context of other work being undertaken as described above, and consider the bandwidth of the community to properly engage in the knowledge that resources are already stretched to capacity. A delay of six months or more may be prudent in order to give itself and the community sufficient time to fully and properly consider this important subject matter together.