



Internet Corporation for Assigned Names and Numbers (ICANN)

Board of Directors Compensation Considerations

A presentation to ICANN's Compensation Committee

April 2014

Introduction

- In October 2013, ICANN’s Compensation Committee (“Committee”) asked staff to engage Towers Watson to re-evaluate the reasonableness of the structure of its outside director compensation program, including the level of compensation, which was originally established for the Board Chair in 2010 and the remaining Board members in 2011
- The scope of this report includes an update of the reasonableness review of total annualized cash compensation and pay program structure for outside (non-executive) directors.
- Board members are “disqualified persons” under Intermediate Sanctions rules of Internal Revenue Code Section 4958 and compensation paid to them can be eligible to earn the presumption of reasonableness only if a committee of authorized, independent persons approves their compensation
 - This report does not address the roles of ICANN non-voting Board liaisons who are not “disqualified persons” subject to the Intermediate Sanctions rules of Internal Revenue Code Section 4958 but who have similar responsibilities to Board members and serve as appointed representatives for ICANN constituent groups
- The objective of the report is to provide the Board with data to set and justify that the total compensation paid to the Board members is reasonable

Introduction *continued*

- ICANN is an international, nonprofit, multi-stakeholder organization. It is responsible for the stability and interoperability of the DNS, the distribution of IP addresses and accurate recordation of protocol parameters
- Furthering this mission requires ICANN to serve a diverse stakeholder base in a transparent manner
- Over the past 15 years, both the Internet and ICANN have grown in complexity. In coming years, as the Internet becomes even more accessible to people around the globe, ICANN expects the volume of work to grow at even a faster pace than it has in recent years
- Service on ICANN's Board involves global responsibilities, necessitates a substantial time commitment which also involves international travel and requires individuals with skills and experience across a broad range of areas

Nonprofit Board Compensation Trends

- Compensation paid for service on nonprofit boards is rare, reported by 16% of nonprofit organizations in the 2012-13 NACD Nonprofit Governance Survey¹; however, there are benefits to compensating nonprofit board members:
 - Promotes economic diversity, giving members an opportunity to serve who might otherwise be unable to do so
 - Promotes professionalism rather than amateurism
 - Attracts the most qualified and able individuals
 - Awards in a tangible way valuable personal time and contributions made for the mission
 - Promotes more risk taking
 - Stimulates better attendance at board and committee meetings
 - Holds board members more accountable for performance
- However, the Attorneys General in several states are scrutinizing nonprofit Board of Director pay

¹While 33% of large organizations reported compensating Board Directors

It is important that compensation be comparable to that of other nonprofit organizations and not deemed excessive by the IRS

Overview of Internal Revenue Code Section 4958

Background – Excess Benefit Transactions and Rebuttable Presumption

- Certain “disqualified persons,” including directors, of a §501(c)(3) organization like ICANN may be assessed excise taxes if they are involved in an excess benefit transaction
- An excess benefit transaction is any transaction in which the director receives an economic benefit from ICANN that is greater than the consideration, including services performed, that the director provides to ICANN
- IRS rules provide for a “rebuttable presumption” process that results in the *presumption* that compensation paid to a disqualified person, including a director, is reasonable
- The presumption is triggered if ICANN complies with three requirements:
 - Compensation is approved by an authorized body of ICANN whose members are free of financial conflict of interest regarding the compensation being reviewed
 - The authorized body considers “appropriate data as to comparability” prior to making its decision
 - The authorized body documents its decision making process adequately and within a reasonable amount of time after the decision

Overview of Internal Revenue Code Section 4958

Overview of Internal Revenue Code Section 4958 *(continued)*

Nature and Effect of the Presumption

- When established, the presumption imposes on the IRS the burden of showing that comparability data relied upon are not valid, which is a substantial benefit in any dispute with the IRS
- If all directors are compensated, it may make it difficult to trigger the presumption
- However, while the IRS considers the presumption to be a “best practice,” it is not a legal requirement

Overview of Internal Revenue Code Section 4958 *continued*

Suggested Process If Presumption Cannot be Established

- Directors agree not to receive more than “reasonable compensation” for their services (“reasonable compensation” is an amount paid by like organizations for like services under like circumstances)
- ICANN follows a process in setting compensation that is reasonably calculated to prevent the payment of more than reasonable compensation
 - This is a process that follows the presumption to the extent possible
- It is essential that ICANN retain and rely upon custom market-comparability studies conducted by independent valuation consultants
- The valuation consultants should issue a report that meets the requirements of a “reasoned opinion” of valuation counsel for purposes of the IRC § 4958 rules
- The consultants should be on hand and available to discuss their reports when compensation is being set
- The valuation process and the opinion should be reviewed annually

Overview of California Nonprofit Corporations Code

Background

- California Nonprofit Corporations Code protects volunteer/unpaid directors of nonprofit corporations against personal liability for acts. Specifically, no cause of action for monetary damages may be asserted against a director or officer of a California Nonprofit Corporation qualifying under §501(c)(3) on account of any negligent act or omission occurring:
 - Within the scope of that person's duties as a director acting as a board member, or officer acting in an official capacity
 - In a manner that the person believes to be in the best interest of the corporation; and in the exercise of his or her policymaking judgment
 - Limitation only applies if the corporation maintains a general liability insurance policy of at least \$1 million (for a corporation with an annual budget in excess of \$50,000) in force both at the time of the injury and at the time that the claim is made. Limitation is also subject to carve-outs for self-dealing transactions, intentional or willful gross negligence, fraud and other bad faith action

Overview of California Nonprofit Corporations Code

continued

Background (*continued*)

- Compensated directors of California nonprofit corporations are still protected against personal liability for failure to discharge their obligations as a director, subject to the following:
 - Conduct is subject to the “business judgment rule,” requiring directors to act in good faith, with reasonable inquiry and in the best interests of the corporation and exercising reasonable care as an ordinarily prudent person under like circumstances
 - Does not protect directors against liability for self-dealing actions or participation in tortious conduct
 - California Nonprofit Corporations Code also provides that directors of a nonprofit public benefit corporation, without regard to compensation, must be indemnified by the corporation if successful on the merits in defense of any proceeding

Background and Methodology

Defining a Comparable Market for ICANN's Board of Directors

- Similar to the framework for examining ICANN's executive compensation, we have assembled a peer group of for-profit and nonprofit organizations that we believe will serve as the best benchmark for outside director compensation at ICANN
- The peer group analysis was supplemented with data from published surveys
- We consider market data sources covering the following comparable markets to be relevant:
 - For-profit general industry companies of similar size (revenue)
 - Nonprofit organizations of similar size and complexity, particularly global, multi-stakeholder organizations

Comparability Data Sources Reviewed

- TWDS 2012 Report on Director Compensation Policies and Practices
- NACD 2012- 2013 Nonprofit Board Governance Survey
- NACD 2012-2013 Director Compensation Report
- Select Form 990s (Nonprofit organizations)
- Select Proxy Reports (For-profit companies)

Board Compensation – Form of Compensation

- **Form of Compensation:** In terms of the structure of outside director compensation, organizations often provide one or more of the following:
 - **Annual retainer:** flat fee intended to cover annual board service; often paid annually or in quarterly installments; typically differentiated between normal directors and the independent chairman (if any)
 - **Board meeting fee:** per meeting fee paid for attendance at board meetings; reduced fee is often paid for telephonic meetings; all outside directors typically receive the same fee
 - **Committee retainer:** annual fee paid for committee service; often differentiated by committee and the associated workload/complexity; often differentiated between committee members and committee chairs; especially demanding committees may receive a premium
 - **Committee meeting fee:** per meeting fee paid for attendance at committee meetings; reduced fee is often paid for telephonic meetings; all outside directors typically receive the same fee
 - **Equity grant:** among publicly-traded, for-profit organizations, it is common to provide annual grants of restricted stock and/or stock options
- The chart below illustrates the typical method of payment for Board service:

Role/Service	Meeting Fee Only	Retainers Only	Meeting Fees & Retainers
Chairman of the Board	0%	57%	43%
Board Service	0%	58%	41%
Committee Member	47%	46%	7%
Committee Chair	1%	96%	2%

Source: 2012 TWDS Board of Directors Compensation Policies and Practices - U.S.
 Audit Committee data used for Committee Member and Committee Chair

Board Compensation – Amount of Compensation

- To determine reasonable compensation levels, we have focused on the average of median *cash* compensation based on the following rationale:
 - Nonprofit directors have less risk associated with their role than public company directors (e.g., legally required SEC disclosure requirements, stock exchange requirements, and risks associated with public ownership)
 - As a result, the median compensation of nonprofit companies is nearly always below for-profit companies
 - Equity is not available to nonprofit organizations
- Due to the complexity of ICANN’s business and the need to attract and retain qualified leadership, both for-profit and nonprofit data are appropriate as the talent does reside within many sectors
- The chart below summarizes our findings:

Source*:	Cash		
	25th %ile	Median	75th %ile
2012-2013 NACD General Industry (For-Profit) ¹	\$36,934	\$54,967	\$81,884
Public Company Peer Group (For-Profit)	\$32,500	\$49,500	\$60,152
990 Analysis (Nonprofit)	\$6,180	\$21,875	\$32,263
Average**	\$25,000	\$45,000	\$60,000

* Data reflects a blend of "Micro" segment - Revenues of \$50M < \$500M and "Small Companies" segment - Revenues of \$500M < \$1.0B

**Average data rounded to the nearest \$5,000.

Board Compensation – Amount of Compensation: *Nonprofit Boards*

- Peer group compensation data were collected from each company's most recently filed Form 990 and are presented on the following page
 - The peer group of nonprofits who pay their outside directors is comprised of nonprofit peers identified in the executive compensation framework plus additional organizations identified in prior analyses
 - Eight of the organizations in the executive compensation framework do not pay their Board members and are not included in this analysis
- Due to the particular reporting requirements in the Form 990s, we can only determine total compensation figures for the Board members of the peer group organizations
 - Data such as annual retainers and meeting fees are not reported separately
 - Board roles such as Committee Chairs and Committee members are not disclosed; due to limited role disclosure, the peer group data are summarized as follows:
 - Chair of the Board
 - Average of all other directors – this excludes the Chair of the Board and includes all other Board roles (Vice Chair, Committee Chair, Committee members and regular Board members)

Details of Select Nonprofits

Organization	Year of 990	Revenue (\$000s) ⁴	# of Dirs Receiving Compensation ⁵	Outside Chairman Avg Pay	Avg Director Pay (non-Chair)	Estimated Total Board Cost
Intl Financial Reporting Stds. Foundation ³	2011	\$41,974	18	--	\$35,442	\$637,955
American Inst of Certified Public Accountants ²	2011	\$213,213	3	\$20,000	\$21,875	\$63,750
Financial Accounting Foundation ¹	2011	\$46,294	14	--	\$48,170	\$674,375
CNA Corporation	2010	\$125,894	15	\$33,500	\$17,571	\$279,500
Int. Institute of Tropical Agriculture ²	2011	\$47,427	15	--	\$4,309	\$64,638
Intl Food Policy Research Institute	2011	\$81,713	11	\$15,900	\$7,360	\$89,500
Ithaca Harbors Inc.	2011	\$64,199	9	\$9,376	\$5,000	\$49,376
Logistics Management Institute	2010	\$192,015	11	\$50,615	\$31,900	\$369,615
Analytic Services Institute	2010	\$123,666	10	\$40,000	\$31,111	\$320,000
Altarum Institute ³	2011	\$66,418	12	\$55,625	\$28,841	\$372,875
Riverside Research Institute	2010	\$86,931	7	\$48,165	\$32,625	\$243,915
Institute for Study Abroad	2011	\$44,311	6	\$2,500	\$2,500	\$15,000
Rand Corporation ³	2011	\$287,428	11	\$7,957	\$3,492	\$42,879
Society for HR Management ³	2011	\$101,873	12	\$35,000	\$17,727	\$230,000
SRI International ³	2011	\$588,914	10	\$180,000	\$50,206	\$631,853
75th Percentile		\$158,954	13	\$48,778	\$32,263	\$371,245
Average		\$140,818	11	\$41,553	\$22,542	\$272,349
Median		\$86,931	11	\$34,250	\$21,875	\$243,915
25th Percentile		\$55,813	10	\$14,269	\$6,180	\$64,194

Notes:

The American Bar Association, included in the 2011 analysis, did not report any trustee compensation in its most-recent Form 990.

¹ FAF approved a revised governance structure approved by the Board of Trustees in 2008 creating a new Chairman position; Chairman is also an Officer

² Board Chair information reported for partial year only

³ Organizations included in the Executive Framework

⁴ Reflects most up to date revenue figures available

⁵ Includes Directors receiving compensation and outside chairmen only

Details of Select For-profits

Company	FYE Revenue (\$mm)	# of Outside Board Members	Fees Earned or Paid in Cash			Audit Committee		Compensation Committee		Nominating / Governance Committee	
			Retainer	Median Total Cash Compensation Paid Board Member	Chairman Extra Retainer	Committee Extra Retainer	Chairman Extra Retainer	Committee Extra Retainer	Chairman Extra Retainer	Committee Extra Retainer	Chairman Extra Retainer
Ancestry.com Inc.	\$400	7	\$30,000	\$32,000	--	\$5,000	\$8,000	\$4,000	\$6,000	\$2,000	\$3,000
ComScore, Inc.	\$255	6	\$25,000	\$31,000	--	\$10,000	\$8,000	\$5,000	\$5,000	\$1,000	\$2,000
Digital River Inc.	\$386	5	\$60,000	\$60,152	\$50,000	\$5,000	\$15,000	\$4,000	\$11,000	--	\$10,000
Intermap Network Services Corp.	\$274	7	\$20,000	\$43,000	\$30,000	\$7,500	\$7,500	\$5,000	\$5,000	\$5,000	\$2,500
iPass Inc	\$126	6	\$20,000	\$49,500	\$20,000	\$5,000	\$10,000	\$5,000	\$5,000	\$5,000	\$5,000
j2 Global Communications Inc.	\$371	5	\$60,000	\$57,500	--	--	\$20,000	--	\$15,000	--	\$15,000
Limelight Networks, Inc.	\$180	6	\$25,000	\$27,500	\$25,000	\$5,000	\$10,000	\$2,000	\$8,000	--	--
Unwired Planet	\$0	7	\$40,000	\$83,000	\$20,000	\$15,000	\$15,000	\$9,000	\$6,000	\$5,000	\$5,000
QuinStreet, Inc.	\$305	6	\$34,000	\$51,000	--	--	\$15,000	--	\$15,000	--	\$15,000
Travelzoo Inc.	\$151	3	\$30,000	\$66,000	--	--	\$30,000	--	--	--	--
ValueClick Inc.	\$661	5	\$25,000	\$32,500	--	--	\$20,000	--	\$7,500	--	\$7,500
VeriSign, Inc.	\$874	5	\$40,000	\$77,500	\$100,000	\$25,000	\$15,000	\$20,000	\$10,000	\$10,000	\$5,000
Web.com Group, Inc.	\$408	6	\$25,000	\$43,500	\$8,000	\$7,500	\$5,000	\$4,000	\$3,000	\$1,500	\$1,500
75th Percentile:	\$400	6	\$40,000	\$60,152	\$40,000						
Average:	\$338	6	\$33,385	\$50,319	\$36,143						
50th Percentile:	\$305	6	\$30,000	\$49,500	\$25,000						
25th Percentile:	\$180	5	\$25,000	\$32,500	\$20,000						

Footnotes:

* "Total cash compensation" for the typical director is based on the median value reported in the "fees earned or paid in cash" column of the director summary compensation table included in the most recent proxy statement. Directors serving in board leadership positions (chairs of the Audit, Compensation, Risk and Governance committees, lead director and/or chairman) are excluded from determining the median value. Similarly, directors that did not serve the entire year, but are otherwise included in the director summary compensation table in the proxy, are excluded from determining the median value.

Board Compensation – Amount of Compensation: Other Considerations – Time Commitment

- When considering the introduction of compensation, it is important to consider relative time commitment
 - ICANN’s Board currently holds three in-person meetings each year, each of which are six to seven days in length and require international travel, 10 special telephonic meetings, and three in-person retreats, each of which are two to three days in length (not including travel)
 - The chart below compares ICANN Board meetings to other organizations

Item	BoardSource Nonprofit	Towers Watson Nonprofit	NACD Nonprofit	Towers Watson For-Profit	ICANN (2013)*
Board Meetings Per Year (in person and telephonic)	7.4 <i>(average)</i>	6 <i>(median)</i>	5.8 <i>(average)</i>	7 <i>(median)</i>	15
Avg. Board Meeting Time	3.3 hours	--	4.9 hours	--	2 - 2.5 hours
*Avg. # of Committee Meetings for each Committee	--	3.6	3.7	4.3	8.2
Annual Retreat Prevalence	52%	--	--	--	3

- All ICANN directors serve on at least one Committee, but typically serve on at least two committees. In addition, Board work outside of the above average number of meetings for 2013 has increased significantly which was considered in developing the recommendation.
 - Board meetings include international travel which is not represented in the chart above but was considered in the final recommendation

Conclusions

Reasonableness

- The vast majority of not-for-profit organizations continue to provide no compensation to Board members
- While select organizations have chosen to compensate their Board members, stakeholder attention and (potential) regulatory developments keep the number of organizations limited
- Unlike executive compensation, director compensation among nonprofit organizations may not always be directly related to company size, time commitment and level of responsibility
- Based on applicable market data and consideration of time commitment, we feel that it would be reasonable to pay outside directors \$40,000 to \$45,000 annually for board service

Conclusions *continued*

- **Form and Amount**

- Offer annual cash retainer of \$40,000 - \$45,000 for outside directors and continue \$75,000 for the Chairman of the Board; allow directors to elect whether or not they would like to receive the retainer
 - Principle #1: **Comparable amounts.** Approximates median of comparable for-profit and nonprofit market levels; Chairman of Board are typically compensated at higher levels to recognize the additional responsibilities and time commitment that is often required; mitigates perception that compensation would be the primary reason someone would join the Board; supports participation by directors in developing countries. This Principle as it relates to the Chair of the Board may also apply to the Chair for the New gTLD Program Committee.
 - Principle #2: **Keep it simple.** Single fee avoids administrative hassles of meeting fees (e.g., what constitutes a meeting, tracking telephonic meeting fees) and avoids perception that directors are holding meetings or establishing committees for financial gain. Additional compensation for Committee Chair work is intended to recognize the additional time and effort spent by the Chairs to prepare for committee meetings. Current ICANN Board members serve on multiple Committees and often in Chair roles. This supports a single increased fee for all Board members and elimination of a separate fee for Committee Chairs.
 - Commit to reviewing Board compensation regularly (both in terms of the practice itself, as well as compensation levels). We understand the current work plan calls for a view every two years.

Notes on Nonprofit Peer Group

- The following organizations included in the executive framework do not pay their outside Board members:
 - American Enterprise Institute for Public Policy
 - Brookings Institute
 - Carnegie Institution of Washington
 - Center for Strategic and International Studies, Inc.
 - Heritage Foundation
 - Internet Society
 - National Academy of Sciences
 - World Resources Institute

Notes on Survey Sources

- *Proxy peer group*: Data represent 13 for-profit companies with median revenues of \$338 million
- *Form 990 Research*: Data represent 15 nonprofit organizations with median revenues of \$86 million
- *NACD General Industry*: Data represent a blend of "Micro" segment - Revenues of \$50M < \$500M and "Small Companies" segment - Revenues of \$500M < \$1.0B. 304 and 298 companies participated in the NACD's 2012-2013 Director Compensation Report (median revenues \$253 and \$681) respectively