

Internet Corporation for Assigned Names and Numbers

Board Conflicts of Interest Policy

(Adopted on _____, 2012)

ARTICLE I -- PURPOSE AND ADMINISTRATION

Section 1.1 Internet Corporation for Assigned Names and Numbers (“ICANN”) is committed to the highest levels of integrity. Covered Persons are expected to conduct their relationships with each other, ICANN and outside organizations with objectivity and honesty. Covered Persons are obligated to disclose ethical, legal, financial and other Conflicts of Interest involving ICANN and remove themselves from a position of decision-making authority with respect to any Conflict of Interest involving ICANN. The purpose of this Board Conflicts of Interest Policy (“COI Policy”) is to prevent any Conflict of Interest or the appearance of a Conflict of Interest from affecting any decision-making involving ICANN, to ensure that the deliberations and decisions of ICANN are made solely in the interests of the global Internet community, as a whole, and to protect ICANN’s interests when ICANN is contemplating entering into a transaction, contract or arrangement or approving a policy, program or other matter that might benefit the personal interests of a Covered Person.

~~Section 1.1 The purpose of the Conflicts of Interest Policy (the “COI Policy”) is to ensure that the deliberations and decisions of ICANN are made in the interests of the global Internet community as a whole and to protect the interests of ICANN when ICANN is contemplating entering into a transaction, contract, or arrangement that might benefit the private interest of a Covered Person.~~

Section 1.2 A Covered Person ~~(see Section VII below for definitions of all defined terms that can be identified throughout this Policy with initial capital letters)~~ may not use his or her position with respect to ICANN, or confidential corporate information obtained by him or her relating to ICANN, in order to achieve a financial or other benefit for himself or herself or for a third person, including another nonprofit or charitable organization.

Section 1.3 This COI Policy is intended to supplement but not to replace any applicable laws governing conflicts of interest ~~in nonprofit and charitable corporations~~ applicable to ICANN.

Section 1.4 ICANN will encourage ~~ICANN~~ Supporting ~~Organization~~ Organizations and Advisory Committees and other ICANN-related bodies, as appropriate, to consider implementing the principles and practices of this COI Policy as relevant.

Section 1.5 The Board Governance Committee (the “BGC”) shall administer and monitor compliance with ~~the~~ this COI Policy in accordance with the terms contained herein.

Section 1.6 Certain ~~Capitalized Terms~~capitalized terms used in this COI Policy shall have the meanings set forth in Article VII of this COI Policy.

ARTICLE II -- PROCEDURES REGARDING CONFLICTS OF INTEREST

Section 2.1 Duty to Disclose.

(a) In connection with any proposed transaction, contract, ~~or~~ arrangement, policy, program or other matter being considered by ICANN, a Covered Person shall promptly disclose ~~to the Board Governance Committee~~ the existence of any Potential ~~Conflicts~~Direct Conflict that may give rise to a Conflict of Interest with respect to the proposed transaction, contract, ~~or~~ arrangement, policy, program or other matter. Such disclosure shall be made to the Office of the General Counsel setting forth, in writing, all relevant facts relating to the Potential Direct Conflict. When in doubt, Interested Persons shall disclose matters as Potential Direct Conflicts.

(b) Potential Perceived Conflicts can be seriously damaging to the multi-stakeholder community's confidence in ICANN. A Potential Perceived Conflict should therefore be treated as equivalent to a Potential Direct Conflict until such time as the doubt is removed and the matter is determined after investigation of all the relevant facts. When in doubt, Interested Persons shall disclose matters as Potential Perceived Conflicts and disclose all relevant facts relating to the Potential Perceived Conflict to the Office of the General Counsel.

(c) If any Covered Person has reason to believe that another Covered Person has a Potential Conflict, the Covered Person with such belief shall inform the Office of the General Counsel, including disclosing all relevant facts relating thereto.

(~~b~~)d) The Interested Person shall provide the Office of the General Counsel with an updated Statement (as provided for in Article V below) at the time any disclosure is made pursuant to this Section 2.1. The disclosure to the ~~Board Governance Committee~~Office of the General Counsel of a Potential Conflict shall be made promptly and pursuant to such procedures as the Board ~~Governance Committee~~or BGC may establish from time to time. The Covered Person making such disclosure is referred to herein as an "Interested Person."

Section 2.2 Determining Whether a Conflict of Interest Exists.

(a) After disclosure of a Potential Conflict by an Interested Person, the ~~Board Governance Committee shall have a discussion with~~Office of the General Counsel will promptly inform the BGC of the Potential Conflict and provide the BGC with all information provided by the Interested Person regarding the material facts with respect torelated thereto. At the discretion of Disinterested members of the BGC, the Interested Person may present further information regarding, or otherwise discuss with such members, the Potential Conflict.

(b) Thereafter, in the absence of the Interested Person, Disinterested members of the ~~Board Governance Committee~~ BGC shall determine whether or not the circumstances disclosed by the Interested Person regarding the Potential Conflict constitute a Conflict of Interest, and, subject to a contrary finding by a majority of the Disinterested Board members ~~Directors~~, the determination by ~~the~~ Disinterested members of the BGC in this regard is conclusive and may not be challenged by the Interested Person. Such determination shall be recorded pursuant to Section 3.1 hereof. If the Interested Person is a Director or Board Liaison, such determination shall be subject to ratification by, and reported to, the Disinterested ~~Board members~~ Directors at the next Board meeting and ~~shall be subject to Board ratification~~ prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Potential Conflict.

Section 2.3 Procedures for Addressing a Conflict of Interest.

(a) If ~~the Board Governance Committee determines~~ Disinterested members of the BGC determine that a Conflict of Interest exists, the Conflicted Person may make a presentation to ~~the Board Governance Committee~~ Disinterested members of the BGC regarding the ~~transaction, contract, or arrangement~~ Conflict of Interest. After any such presentation, subject to Section 2.4(d), the Conflicted Person shall leave the meeting and shall not be present during any discussion of the Conflict of Interest.

(b) The Chair of the ~~Board Governance Committee~~ BGC (if Disinterested) or a majority of the Disinterested members of the BGC, shall, if appropriate, appoint a Disinterested person or committee to investigate alternatives or modifications, as applicable, to the proposed transaction, contract, ~~or~~ arrangement, policy, program or other matter. If the Conflicted Person is a Director or Board member ~~Liaison~~, the findings shall be reported to Disinterested Directors at the next Board meeting and prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Conflict of Interest.

(c) ~~After exercising due diligence, the Board Governance Committee~~ After investigating the proposed transaction, contract, arrangement, policy, program or other matter, Disinterested members of the BGC shall determine whether ICANN can obtain with reasonable efforts a more advantageous transaction, contract, ~~or~~ arrangement, policy, program or other matter in a manner that would not give rise to or would alleviate or mitigate a Conflict of Interest. If the Conflicted ~~person~~ Person is a Director or Board member ~~Liaison~~, such determination shall be reported to the ~~Board~~ Disinterested Directors at the next Board meeting and prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Conflict of Interest.

(d) If a more advantageous transaction, contract, ~~or~~ arrangement, policy, program or other matter is not reasonably ~~possible~~ available to ICANN under circumstances not producing a

Conflict of Interest, ~~or the Board Governance Committee~~transaction, contract, arrangement, policy, program or other matter cannot be modified to alleviate or mitigate a Conflict of Interest, the Disinterested members of the BGC, and where the Conflicted Person is a Director or Board member Liaison, the Board, Disinterested Directors shall determine by a majority vote of the applicable Disinterested members Directors whether the ~~transaction, contract, or arrangement, policy, program or other matter creating the Conflict of Interest~~ is in ICANN's best interest, for its own benefit, and whether it is fair and reasonable to ICANN. In conformity with those determinations, ~~the Board Governance Committee or the Board~~Disinterested members of the BGC or Disinterested Directors, as applicable, shall make its decision as to whether ICANN should enter into the transaction, contract or arrangement or approve the policy, program or other matter.

Section 2.4: Duty to Abstain

(a) After disclosing the existence of a Potential Conflict, Interested Persons shall refrain from using their personal influence (either at or outside a Board meeting) to influence ICANN's handling of the transaction, contract, arrangement, policy, program or other matter.

~~(ab)~~ No Director may vote on, and each Director must abstain from voting on, any matter in which the Director has a ~~material Financial~~Conflict of Interest ~~that will be affected by the outcome of the vote~~, except that a Director need not abstain from, and may vote on, whether to accept or to reject a recommendation to the Board by an Independent Valuation Expert contained in a Reasoned Written Opinion from such Independent Valuation Expert regarding a ~~compensation~~Compensation arrangement for services provided by the Director to ICANN in the Director's capacity as a member of the Board ~~of ICANN~~.

~~(bc)~~ In the event of such an abstention, the abstaining Director shall state the reason for the abstention, which shall be ~~noted in the notes of the meeting in which the abstention occurred~~recorded pursuant to Section 3.1.

~~(ed)~~ Except as otherwise provided in Section 2.4~~(ab)~~, above, regarding a compensation arrangement for services provided by the Director to ICANN in the Director's capacity as member of the Board ~~of ICANN~~, no Director may participate in ~~Committee~~Board committee or Board deliberations on any transaction, contract, arrangement, policy, program or other matter in which he or she has a ~~material Financial~~Conflict of Interest without first disclosing the conflict (and otherwise complying with the requirements of this COI Policy) and until a majority of Disinterested ~~Committee or Board~~ members of the BGC or a majority of the Disinterested Directors present agree on whether and in what manner the ~~Board member~~Conflicted Person may participate.

Section 2.5 Violations of the Conflicts of Interest Policy

(a) If ~~the Board Governance Committee has~~ Disinterested members of the BGC have reasonable cause to believe a Covered Person has failed to disclose ~~an actual or a~~ Potential Conflict ~~of Interest~~, the ~~Board Governance Committee~~ BGC shall inform the Covered Person, and initiate the procedures described in ~~Section~~ Sections 2.1, 2.2 and 2.3.

(b) If Disinterested members of the BGC determine that a Director or Board Liaison has intentionally failed to disclose a Potential Conflict, the Disinterested members of the BGC shall make recommendations to the Disinterested Directors for corrective action. The Disinterested Directors shall review the Disinterested members of the BGC's recommendation and shall take such corrective action as they deem appropriate, including, but not limited to, removal of a non-disclosing Director or Board Liaison in accordance with ICANN's Bylaws and applicable law.

ARTICLE III -- RECORDS OF PROCEEDINGS

Section 3.1 The written or electronic records of the Board and the ~~Board Governance Committee~~ BGC relating to Conflicts of Interest shall contain:

- (~~a~~i) The names of Covered Persons who disclosed or otherwise were found to have a Potential Conflict in connection with a proposed ~~transaction, contract, or~~ arrangement, policy, program or other matter;
- (~~b~~ii) The nature of the Potential Conflict;
- (~~e~~iii) Any action taken to determine whether a Conflict of Interest was present;
- (~~d~~iv) The Board's or ~~Board Governance Committee's~~ BGC's, as applicable, decision as to whether a Conflict of Interest in fact existed;
- (~~e~~v) The names of the persons who were present for discussions and votes relating to the transaction, contract, ~~or~~ arrangement, policy, program or other matter;
- (~~f~~vi) The content of the discussion, including any alternatives to the proposed transaction, contract, ~~or~~ arrangement, policy, program or other matter; and
- (~~g~~vii) A record of any votes taken in connection therewith.

ARTICLE IV -- COMPENSATION

Section 4.1 ~~A Covered Person~~ Except to the extent permitted under Section 2.4(b), a Director who receives ~~compensation~~Compensation, directly or indirectly, from ICANN for services may not vote on matters pertaining to the ~~Covered Person's compensation~~Director's Compensation.

Section 4.2 A ~~Covered Person~~Director may not vote on matters pertaining to ~~compensation~~Compensation received, directly or indirectly, from ICANN by a member of the ~~Covered Person's~~Director's Family or by an individual with whom a ~~Covered Person~~Director has a close personal relationship, including, but not limited to, any relationship other than kinship, spousal or spousal equivalent that establishes a significant personal bond between the ~~Covered Person~~Director and such other individual that in the judgment of the ~~Board Governance Committee~~BGC could impair the ~~Covered Person's~~Director's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANN.

Section 4.3 No Covered Person who receives ~~compensation~~Compensation, directly or indirectly, from ICANN, either individually or collectively, is prohibited from providing information to the Board or to any Committee regarding the Covered Person's ~~compensation~~Compensation.

ARTICLE V -- ANNUAL STATEMENTS

Section 5.1 Each Covered Person shall annually ~~sign a statement, or promptly upon becoming a Covered Person, sign a Statement~~ which affirms such Covered Person: (i) has received a copy of the COI Policy; (ii) has read and understands the COI Policy; (iii) has agreed to comply with the COI Policy; and (iv) understands ICANN is a tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code and that in order to maintain its federal tax exemption, ICANN must engage primarily in activities which accomplish one or more of ICANN's tax-exempt purposes.

Section 5.2 On an annual basis, all Covered Persons shall disclose on their Statement a list of all organizations in which he or she has a Financial Interest or Duality of Interest.

Section 5.3 On an annual basis, the BGC shall review the Statements of the Covered Persons to determine whether any Covered Person has a Conflict or Conflicts of Interest that is, or in the aggregate are, so pervasive that the Conflicted Person should no longer serve in his or her respective role.

ARTICLE VI -- PERIODIC REVIEWS

Section 6.1 To ensure ICANN operates with the highest levels of integrity and in a manner consistent with its tax-exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, ICANN’s Office of the General Counsel and Finance Department shall conduct periodic reviews of its purposes and activities.

Section 6.2 These periodic reviews shall, at a minimum, include the following subjects:

(~~a~~i) Whether activities carried on by ICANN are consistent with and in furtherance of one or more of ICANN’s tax-exempt purposes;

(~~b~~ii) Whether ICANN follows policies and procedures reasonably calculated to prevent private Inurement more than incidental private benefit, excess benefit transactions, substantial lobbying, and participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office;
~~and~~

(~~e~~iii) Whether compensation arrangements and benefits are reasonable, are based on appropriate data as to comparability, and are the result of arm’s length bargaining; ~~and~~

(~~d~~iv) Whether partnerships, joint ventures, and arrangements with organizations that provide management personnel or management services conform to ICANN’s written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further tax-exempt purposes, and do not result in private Inurement more than incidental private benefit, or in an excess benefit transaction.

Section 6.3 When conducting the periodic reviews, ICANN may, but need not, use outside experts and/or advisors. If outside experts and/or advisors are used, their use shall not relieve the Board of ~~ICANN of~~ its responsibility for ensuring periodic reviews are conducted in the manner prescribed in this Article.

ARTICLE VII -- DEFINITIONS

Section 7.1 As used in this COI Policy, the following terms shall have the meanings set forth below.

(i) “Advisory Committees” means the Governmental Advisory Committee, the At-Large Advisory Committee, the Security and Stability Advisory Committee and the Root Server System Advisory Committee.

(ii) “Board” means the ICANN Board of Directors.

(iii) “Board Governance Committee” means the Board Governance Committee of the Board.

~~(aiv)~~ “Board Liaison” shall mean those liaisons to the ~~ICANN Board of Directors~~ appointed in accordance with ICANN’s Bylaws.

~~(bv)~~ “Compensation” includes direct and indirect remuneration as well as gifts or favors that are ~~substantial~~material in nature. or amount. Compensation does not include reimbursement of properly documented travel and other appropriate business expenses.

~~(e) “COI Policy” means this Conflict of Interest Policy as adopted by the Board of ICANN on 30 July 2009.~~

~~(dvi)~~ A “Conflict” or “Conflict of Interest” arises when the Board or ~~Board Governance Committee~~BGC, as applicable, following the procedures set forth in Articles II and III of this COI Policy, determines that a Covered Person has disclosed a Potential Conflict that may in the judgment of a majority of the Disinterested Directors or Disinterested members of the Board or ~~Board Governance Committee~~BGC, as applicable, adversely impact the Covered Person’s ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANN.

~~(evii)~~ “Conflicted Person” means a Covered Person ~~that~~who has been determined by the Board ~~Governance Committee~~or the BGC to have a Conflict of Interest.

~~(fviii)~~ “Covered Person” shall mean an Officer, Director, Board Liaison, or Key Employee of ICANN.

~~(gix)~~ A “Director” is any voting member of the Board ~~of ICANN~~.

~~(hx)~~ “Disinterested” means not having a Potential Conflict with respect to a transaction, contract, ~~or~~ arrangement, policy, program or other matter being considered by ICANN.

~~(ixi)~~ “Domestic Partner” shall mean an individual who resides at the same residence as the Covered Person as his or her spousal equivalent.

(~~j~~xii) A “Duality of Interest” arises when, with respect to a transaction, contract, ~~or~~ arrangement, policy, program or other matter, a Covered Person or a member of a Covered Person’s Family has a fiduciary relationship with another party to a proposed transaction, contract, or arrangement which gives rise to a circumstance in which the fiduciary duties of the Covered Person to ICANN and the fiduciary duties of the Covered Person, or the fiduciary duties of the Family ~~Member~~member of the Covered Person, to the other party may be in conflict. A Duality of Interest does not constitute a Conflict of Interest if ICANN and all other parties to the transaction, contract, or arrangement, being in possession of all material facts, waive the conflict in writing.

(~~k~~xiii) The “Family” of any Covered Person shall include the Covered Person’s spouse; Domestic Partner; siblings and their spouses or Domestic Partners; ancestors and their spouses or Domestic Partners; and descendants and their spouses or Domestic Partners. Family shall also include anyone (other than a domestic employee or service provider) who shares the Covered Person’s home.

(~~l~~xiv) A “Financial Interest” exists whenever a Covered Person has or is engaged in discussions to have, directly or indirectly, through business, investment, or Family: (~~ia~~) an ownership or investment interest in any entity with which ICANN has a transaction, contract, arrangement, policy, program or other ~~arrangement~~matter; (~~ib~~) a ~~compensation~~Compensation arrangement with any entity or individual with which ICANN has a transaction, contract, arrangement, policy, program or other ~~arrangement~~matter; and (~~ic~~) a potential ownership or investment interest in, or ~~compensation~~Compensation arrangement with, any entity or individual with which ICANN is negotiating a transaction, contract, ~~or other arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. Transactions~~arrangement, policy, program or other matter. As used herein, “transactions, contracts, and arrangements” include grants or other donations as well as business arrangements, approvals or endorsements. Additionally, as used herein “policies, programs or other matters” include, but are not limited to, the application for or the registration of top level domains. A Financial Interest is a Potential Conflict but is not necessarily a Conflict of Interest. A Financial Interest does not become a Conflict of Interest until the Board ~~Governance Committee~~or BGC, following the procedures set forth in Articles II and III of this COI Policy, determines that the Financial Interest constitutes a Conflict of Interest.

(~~m~~xv) An “Independent Valuation Expert” means a Person retained by ICANN to value compensation arrangements that: (~~ia~~) holds itself out to the public as a compensation consultant; (~~ib~~) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for Persons other than ICANN; (~~ic~~) is qualified to make

valuations of the type of services involved in any engagement by and for ICANN; ~~(ivd)~~ issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and ~~(ve)~~ includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in ~~(ia)~~ through ~~(ivd)~~ of this definition.

~~(xvi)~~ An “Interested Person” is a Covered Person who has a Potential Conflict ~~of Interest~~ with respect to a particular transaction, contract, ~~or arrangement,~~ policy, program or other matter under consideration by ~~the Board or Board Governance Committee, as applicable~~ ICANN.

~~(xvii)~~ “Internal Revenue Code” shall mean the United States Internal Revenue Code of 1986, as amended, or any future revenue statute replacing the 1986 Code.

~~(xviii)~~ “Inurement,” as used in this COI Policy, shall mean: ~~(ia)~~ a transaction in which ICANN provides an economic benefit, directly or indirectly, to or for the use of any Covered Person where the value of that economic benefit exceeds the value of the consideration (including the performance of services) that ICANN receives in exchange; or ~~(ib)~~ any transaction or arrangement by or through which a Covered Person receives a direct or indirect distribution of ICANN’s net earnings (other than payment of fair market value for property or the right to use property and reasonable compensation for services).

~~(xix)~~ A “Key Employee” is an employee of ICANN designated as a member of the ~~Executive Management~~ executive management team of ICANN, but who is not an Officer or Director.

~~(xx)~~ An “Officer” is an individual holding a position designated as an Officer by ICANN’s Bylaws or by resolution of the Board and includes, without limitation, the President of ICANN.

~~(xxi)~~ A “Person” includes an individual, corporation, limited liability company, partnership, trust, unincorporated association, or other entity.

~~(xxii)~~ A “Potential Conflict” means either a Potential Direct Conflict or a Potential Perceived Conflict.

~~(xxiii)~~ A “Potential Direct Conflict” means any one or more of the following: ~~(ia)~~ a direct or indirect Financial Interest in a transaction, contract or arrangement being considered by ICANN, by a Covered Person or a member of a Covered Person’s Family; ~~(ib)~~ a Duality of Interest by a Covered Person or a member of a Covered Person’s Family with respect to another party to a transaction, contract,

or arrangement being considered by ICANN that has not been waived in writing by all parties to the transaction, contract, or arrangement; or (iii) a close personal relationship between the Covered Person, or a member of a Covered Person's Family, with an individual who is, directly or indirectly through business, investment, or Family, a party to a transaction, contract, or arrangement being considered by ICANN.

(xxiv) A "Potential Perceived Conflict" exists when a reasonable person, knowing the relevant facts, could conclude that the Covered Person's private interests could adversely impact the Covered Person's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANN.

(xxv) "Regulations" means treasury regulations promulgated under the Internal Revenue Code.

(xxvi) "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of Section 7.1(m)(i) through (iv) of this COI Policy. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(xxvii) "Statement" means the annual statement required by Article V hereof.

(xxviii) "Supporting Organizations" mean the Adverse Supporting Organization, the Generic Names Supporting Organization and the Country Codes Name Supporting Organization.

Section 7.2 Where terms used in this COI Policy, such as Reasonable Compensation (which shall have the meaning set forth in § 53.4958-4(b)(1)(ii) of the Regulations), have a particular meaning under the Internal Revenue Code and/or any Regulations issued thereunder, this COI Policy shall be construed to incorporate that meaning as the context requires.

Section 7.3 All other terms used in this COI Policy shall be given their ordinary, everyday meaning.