

# INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

## Corporate Governance Guidelines<sup>1</sup>

*(Adopted on \_\_\_\_\_, 2012)*

### **Introduction**

Over the course of the existence of Internet Corporation for Assigned Names and Numbers (“ICANN”), the Board of Directors (the “Board”) has developed corporate governance policies and practices to help it fulfill its responsibilities to ICANN and its stakeholders. These Corporate Governance Guidelines (“Guidelines”) provide a structure within which the Board and management can effectively pursue ICANN’s mission. The Board intends that these Guidelines serve as a flexible framework within which the Board may conduct its business, not as a set of binding legal obligations. These Guidelines should be interpreted in the context of all applicable laws, and ICANN’s Articles of Incorporation, Bylaws, policies and processes. The Guidelines are subject to future refinement or changes as the Board may find necessary or advisable.

### **Role of the Board**

The mission of ICANN is to coordinate, at the overall level, the global Internet’s systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems. The fundamental responsibility of Directors (as defined below) is to exercise their business judgment to act in what they reasonably believe to be the best interests of ICANN. It is the duty of the Board to oversee management’s performance to ensure that ICANN operates in an effective, efficient and ethical manner. The following core values should guide the Board’s decisions and actions:

- Preserving and enhancing the operational stability, reliability, security and global interoperability of the Internet.
- Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to those matters within ICANN’s mission requiring or significantly benefiting from global coordination.
- To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

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<sup>1</sup> This version of the Corporate Governance Guidelines is largely based on existing ICANN policies, procedures and processes. Counsel is recommending that the Board also discuss including additional provisions in these Guidelines, including: (i) Director independence standards; (ii) limitations on the number of boards (other than ICANN) on which a Director may serve; (iii) a notification and conflict evaluation process if a Director experiences a change of employment; (iv) expansion of the policy adopted by the ICANN Board of Directors in December 2011 relating to ICANN’s gTLD program and a Director’s subsequent employment opportunities (including cooling-off periods during which former Directors would not participate in ICANN related matters at any future employer); and (v) enforcement mechanisms to encourage compliance with the Guidelines and other ICANN governance policies.

- Seeking and supporting broad, informed participation reflecting the functional, geographic and cultural diversity of the Internet at all levels of policy development and decision-making.
- Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
- Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
- Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
- Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
- Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
- Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
- While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. The Board will exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values. (See Bylaws, Article I, Section 2.)

Directors are individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and are not representatives of the entity that selected them, their employers, or any other organizations or constituencies. (See Bylaws, Article VI, Section 7.)

### **Board Composition and Selection; Independent Directors**

1. **Board Size.** The Board has 16 voting members ("Directors") and five non-voting liaisons ("Liaisons" and, together with the Directors, the "Board Members"). The Board periodically evaluates whether a larger or smaller Board would be preferable.
2. **Selection of Board Members.** Board Members are selected in accordance with the procedures set forth in Article VI, Section 2 of ICANN's Bylaws.

3. **Board Membership Criteria.** The Nominating Committee, Supporting Organizations and the At-Large Community (as these terms are used in ICANN's Bylaws) seek to ensure that the Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience and perspective. In accordance with Article VI, Section 3 of ICANN's Bylaws, the Board is to be comprised of individuals that meet the following requirements:
- Persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making.
  - Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN.
  - Persons who will produce the broadest cultural and geographic diversity on the Board.
  - Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars, with ccTLD registries, with IP address registries, with Internet technical standards and protocols, with policy-development procedures, legal traditions, and the public interest and with the broad range of business, individual, academic, and non-commercial users of the Internet.
  - Persons who are able to work and communicate in written and spoken English.

No official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director, and no person who serves in any capacity (including as a liaison) on any Supporting Organization council will simultaneously serve as a Director or Liaison. In addition, persons serving in any capacity on the Nominating Committee will be ineligible for selection to positions on the Board. (See Bylaws, Article VI, Section 4.)

4. **Board Composition – Mix of Management and Independent Directors.** Only the President may be both an ICANN employee and a Board Member. No other Board Member may be an employee of ICANN. (See Bylaws, Article VI, Section 2.)
5. **Removal.** Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action will not be entitled to vote on such an action or be counted as a voting Director when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director will be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice

must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.

With the exception of the Liaison appointed by the Governmental Advisory Committee, any Liaison may be removed, following notice to that Liaison and to the organization by which that Liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The Board may request the Governmental Advisory Committee to consider the replacement of the Liaison appointed by that Committee if the Directors, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate. (See Bylaws, Article VI, Section 11.)

6. **Term Limits.** The Board has determined that it is in the best interest of ICANN and its stakeholders to strike a balance between Board continuity and Board evolution. Board Members who serve on the Board for an extended period of time are able to provide valuable insight into the operations and future of ICANN based on their experience with, and understanding of, ICANN's mission, history, policies and objectives. However, term limits ensure that the Board will continue to evolve with the infusion of fresh ideas and new perspectives. At present, Board Members are not allowed to serve more than three consecutive, three-year terms on the Board, other than the President. A person selected to fill a vacancy in a term shall not be deemed to have served that term. The term as Director of the person holding the office of President and CEO will be for as long as, and only for as long as, such person holds the office of President. (See Bylaws, Article VI, Section 8.)
7. **President; Board Chair and Vice-Chair.** The Board selects ICANN's President and CEO, Chair and Vice-Chair in the manner that it determines to be in the best interests of ICANN. The President and CEO, who serves as an ex officio Director, is not eligible to be the Chair or Vice-Chair of the Board. (See Bylaws, Article VI, Section 2.)

### **Board Meetings; Involvement of Senior Management and Independent Advisors**

8. **Board Meetings – Frequency.** The Board will generally hold regularly scheduled meetings throughout the year and will hold additional special meetings as necessary. In addition, the Board generally has informal meetings from time to time to review and discuss ICANN's operations and policy matters. Each Board Member is expected to attend both scheduled and special meetings, except if unusual circumstances make attendance impractical.
9. **Board Meetings – Agenda.** At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting will be posted on the ICANN website. Board meeting agendas will be set by the Chair of the Board,

following consultation with ICANN management and taking into account suggestions from other members of the Board.

10. **Advance Distribution of Materials.** All information relevant to the Board's understanding of matters to be discussed at an upcoming Board meeting should be distributed in writing or electronically to all members in advance, whenever feasible and appropriate. Each Board Member is expected to review this information in advance of the meeting to facilitate the efficient use of meeting time. The Board recognizes that certain items to be discussed at Board meetings are of an extremely sensitive nature and that the distribution of materials on these matters prior to Board meetings may not be appropriate.
11. **Access to Employees.** The Board should have access to ICANN officers to ensure that Board Members can ask all questions and glean all information necessary to fulfill their duties. The President and CEO, together with the Board, have developed a protocol for making such inquiries. Management is encouraged to invite ICANN personnel to any Board meeting at which their presence and expertise would help the Board have a full understanding of matters being considered.
12. **Access to Independent Advisors.** The Board and its committees have the right at any time to retain independent outside auditors and financial, legal or other advisors. Individual Directors may not retain outside advisors without prior Board or committee approval, as applicable. ICANN will provide appropriate funding, as determined by the Board or any committee, to compensate those independent outside auditors or advisors, as well as to cover the ordinary administrative expenses incurred by the Board and its committees in carrying out their duties. It is expected that ICANN staff will assist the Board and committees in retaining outside advisors.
13. **Compensation Consultant Independence.** The Compensation Committee has sole authority to retain and terminate compensation consultants that advise the Compensation Committee, as it deems appropriate. It is the policy of the Compensation Committee that any compensation consultant retained by the Compensation Committee must be independent of ICANN management. It is expected that ICANN staff will assist the Compensation Committee in retaining outside advisors.
14. **Executive Sessions of Non-Management Directors.** The non-management Board Members will meet regularly in executive session, i.e., without management present. These executive sessions will be called and chaired by the Chair of the Board. These executive session discussions may include such topics as the Chair determines.

## **Accountability and Review; Public Meetings**

15. **Ombudsman.** Pursuant to Article V of the Bylaws, ICANN maintains an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The principal function of the Ombudsman is to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, the Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation and "shuttle diplomacy" to achieve these results. The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. The annual report will be posted on ICANN's website. (See Bylaws, Article V.)
16. **Requests for Reconsideration.** Subject to the provisions of ICANN's Bylaws, any person or entity materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information, may request review or reconsideration of that action or inaction. (See Bylaws, Article IV, Section 2.)
17. **Independent Review.** Any person or entity materially affected by a Board decision or action may submit a request for independent review of any such decision or action alleged to be inconsistent with ICANN's Articles of Incorporation or Bylaws. (See Bylaws, Article IV, Section 3.)

### **Performance Evaluation; Development and Succession Planning**

18. **Annual CEO Evaluation.** The Chair of the Compensation Committee leads the Compensation Committee in conducting a review of the performance of the President at least annually. The Compensation Committee establishes the evaluation process for the review of the President's performance. The evaluation results are reviewed and discussed with the non-management Board Members, and the results are communicated to the President. The Board Governance Committee, from time to time, is to review and advise on the effectiveness of the relationship between the President and the Board.
19. **Development and Succession Planning.** A primary responsibility of the Board is planning for President succession and overseeing the identification and development of executive talent. The Board, with the assistance of the Compensation Committee and working with the President and CEO and human resources department, oversees executive officer development and corporate succession plans for the President and other executive officers to provide for continuity in senior management.

The Board will maintain an emergency succession contingency plan should an unforeseen event such as death or disability occur that prevents the President and CEO from continuing to serve. The plan will identify the individuals who would act in an emergency and their responsibilities. The contingency plan is to be reviewed by the Board annually and revised as appropriate.

The Board may review development and succession planning more frequently as it deems necessary or desirable.

20. **Board and Committee Self-Evaluation.** The Board Governance Committee is responsible for conducting periodic evaluations of the performance of the Board and each of its members. In addition, each committee is responsible for conducting an annual performance evaluation. Evaluation results are reported to the Board. The Board Governance Committee's report should generally include an assessment of the Board's compliance with the principles set forth in these guidelines, as well as identification of areas in which the Board could improve its performance. Each committee's report generally should include an assessment of the committee's compliance with the principles set forth in these Guidelines, the committee's charter and identification of areas in which the committee could improve its performance.
21. **Reviews of Supporting Organizations and Advisory Committees.** The Board will cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board directs, will be to determine: (i) whether that organization has a continuing purpose in the ICANN structure; and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness. These periodic reviews will be conducted no less frequently than every five years, based on feasibility as determined by the Board. (See Bylaws, Article IV, Section 4.)

## **Board Compensation**

22. **Board Compensation Review.** The Board will periodically review the compensation paid to Directors, and whether it is in the best interest of ICANN to increase or decrease the amount of such compensation. In doing so, the Board will follow a process that is calculated to pay an amount for service as a Director that is in its entirety reasonable compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations. As part of the process, the Board will retain an independent compensation expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a reasoned written opinion from such expert regarding the ranges of reasonable compensation for any such services by a Director. After having reviewed the expert's written opinion, the Board will meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the

expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert. The Board will adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination. (See Bylaws, Article VI, Section 22.)

## **Board Committees**

23. **Number, Type and Composition of Committees.** The Board may establish or eliminate committees of the Board as it deems appropriate. Each committee will perform its duties as assigned by the Board in compliance with ICANN's Bylaws and the committee's charter. The composition of each committee will be determined from time to time by the Board, provided that only Directors may be appointed to a committee of the Board as voting members. If a person appointed to a committee of the Board ceases to be a Board Member, such person will also cease to be a member of any committee of the Board. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time pursuant to the provisions of ICANN's Bylaws. Unless appointed by the Board, the selection process for each committee chair will be set forth in each committee charter. (See Bylaws, Article XII.)
24. **Committee Meetings and Agenda.** The chair of each committee is responsible for developing, together with relevant ICANN managers, the committee's general agenda and objectives and for setting the specific agenda for committee meetings. The chair and committee members will determine the frequency and length of committee meetings consistent with the committee fulfilling its obligations as set forth in the committee's charter.

## **Board Education**

25. **Board Member Orientation and Continuing Education.** The Board Governance Committee and management are responsible for Board Member orientation programs and for Board Member continuing education programs to assist Board Members in maintaining skills necessary or appropriate for the performance of their responsibilities.
  - a) Orientation programs are designed to familiarize new Board Members with ICANN's businesses, strategies and policies and to assist new Board Members in developing the skills and knowledge required for their service.
  - b) Continuing education programs for Board Members may include a combination of internally developed materials and presentations, programs presented by third parties, and financial and administrative



support for attendance at qualifying university or other independent programs.

## **Review**

26. **Review of Governance Guidelines.** The policies and practices memorialized in these Guidelines have developed over a period of years. The Board expects to review these Guidelines at least every two years, as appropriate.