

Report of Public Comments

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| Title: | ICANN Board Conflicts of Interest Review – Independent Expert Report | | |
| Publication Date: | | | |
| Prepared By: | Samantha Eisner, Senior Counsel | | |
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| Section I: General Overview and Next Steps | | | |
| <p>One area that is clear that Board attention is required is in outreach to the ICANN community, as both commenters who addressed stakeholder engagement noted that the one-hour sessions at ICANN public meetings are not sufficient. The commenters also identified that focus on addressing Board member’s post service work should continue, as well as continued work on training for identification of conflicts of interest and meeting highest ethical standards.</p> <p>The Board Governance Committee (BGC) is continuing its work to address the Independent Experts’ Report and to enhance ICANN’s ethical practices. The BGC will review the areas highlighted in the public comments as part of this work.</p> | | | |
| Section II: Contributors | | | |
| <p><i>At the time this report was prepared, a total of [number] (n) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor’s initials.</i></p> | | | |
| <u>Organizations and Groups:</u> | | | |
| Name | | Submitted by | Initials |
| gTLD Registries Stakeholder Group | | Chuck Gomes | RySG |
| GNSO Intellectual Property Constituency | | Steve Metalitz | IPC |
| <u>Individuals:</u> | | | |
| Name | | Affiliation (if provided) | Initials |
| Vanda Scartezini | | Chair, 2011-2012 ICANN Nominating Committee | VS |
| Section III: Summary of Comments | | | |
| <p><i>General Disclaimer: This section is intended to broadly and comprehensively summarize the comments</i></p> | | | |

submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

VS addressed specific recommendations within the Report (previous Board experience should be a criterion used by the Nominating Committee in making its selections; and use of a recruitment firm to identify candidates for Board service) noting that in response to the Accountability and Transparency Review Team Recommendations, the NomCom has already included prior service on a Board as criteria for Board candidates. VS also noted that the 2011 NomCom used a recruiting firm to assist in their work, and only one candidate came through that process, as opposed to 89 candidates brought in through community outreach.

The RySG noted its consensus position in support of the experts' recommendation regarding an outreach program to understand the needs, interests and expectations of strategic stakeholders. The RySG states that a one hour session with the Board held at each of ICANN's three public meetings is not sufficient outreach and does not meet the goal of establishing trust and confidence.

The IPC submitted reply comments, noting that the 21-day comment period is not sufficient time for community comment and does not comport with a commitment to accountability and transparency. The IPC states that this is in direct conflict to the commitment to enhancing ICANN's overall culture of promoting superior ethics, integrity and transparency stated in the Expert's report. The IPC endorsed the RySG's statement regarding the insufficiency of the one-hour sessions at ICANN's public meeting as Board outreach, noting that the IPC has to share it's one hour with two other constituencies, further reducing outreach. The IPC suggested that the Expert recommendation for a Board charter would become yet another piece of paper that does not deal with "the real-time issue of current and former ICANN Board Members profiting from their recent voting decisions." The IPC did not agree with the Expert recommendation regarding not extending the post-service limitation imposed for those who participate in voting on the New gTLD Program. The IPC noted its support for regular training on ethical obligations, and queried why there was no mention of the General Counsel's obligations in this regard. The IPC supported the recommendation of the Experts regarding use of outside recruiting firms to identify Board candidates to bring the right mix and skill to the Board. Finally, the IPC noted the import of sanctions to deal with directors who do not fulfill their duty of good faith and loyalty to ICANN.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The commenters were divided on the use of independent recruiting firms to identify Board candidates, one noting that prior experience on the Nominating Committee showed that this is not effective, and another applauding the Expert recommendation in this area. It should be noted that, without interfering, the Board Governance Committee is currently looking at how to help the

Nominating Committee enhance its recruiting efforts for all positions that it fills, which could include additional services from independent recruiting firms.

Both commenters that addressed the Board's outreach to community identified that the one-hour sessions with stakeholder groups are not sufficient, particularly where those sessions are shared among constituencies. On 14 September 2012, ICANN's new President and CEO announced the creation of a new position that should help address these comments, Head of Global Stakeholder Engagement.

One of the three commenters questioned the sufficiency of the Expert recommendations to address the issue of Board members profiting unethically off decisions, suggesting that ICANN adopt more restrictive post-service limitations on Board members, as well as incorporating an escalated sanctions regime to address where Board members do not follow their duties to ICANN and the Internet Community. There was also support for mandatory training on ethical issues, and a suggestion that a portion of the General Counsel's performance be measured on his work relating to identification and mitigation of conflicts of interest among Board members. The Board is looking at incorporating a graduated sanctions method for addressing Board member's failure to act within the policies created. Further, the Board is also enhancing its training programs and is interested in including training on conflicts of interest and ethics as well. The Board has also taken note of the other comment suggesting that the Expert recommendations do not go far enough in terms of post-service limitations, and when determining how to add to those stated limitations, will balance that with the Expert's positions as well as the reality that some Board members do come from the industry.