

Report of Public Comments

Title:	ICANN Board Conflicts of Interest Review - Revised Conflicts of Interest Policy and Related Governance Documents		
Publication Date:			
Prepared By:			
Comment Period:		Important Information Links	
Open Date:	11 March 2012	Announcement	
Close Date:	24 April 2012	Public Comment Box	
Time (UTC):	23.59	View Comments Submitted	
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Section I: General Overview and Next Steps			
<p>To receive public comment on revisions to the following documents: Board Conflicts of Interest Policy, Code of Conduct and Expected Standards of Behavior as well as a proposed Corporate Governance Guidelines prepared as part of ICANN's ongoing review of its Conflicts of Interest and Ethics practices.</p> <p>ICANN is undertaking a three-part review of its Conflicts of Interest and Ethics practices. One of those steps is working with ICANN's long-standing outside counsel to review ICANN's corporate governance documents to make recommendations of how those could be improved in light of best practices in corporate governance, while still reflecting the needs of ICANN. This review produced recommended modifications to the ICANN Board Conflicts of Interest Policy, Code of Conduct and Expected Standards of Behavior, as well as introducing a more comprehensive Corporate Governance Guidelines document. This work has been conducted in coordination with the Board Governance Committee.</p> <p><u>Next Steps:</u></p> <p>This summary will be provided to the Board Governance Committee for consideration as to whether it is appropriate to recommend to the Board that the proposed documents be adopted. The comments received may also be considered by both of the outside counsel firms that are currently engaged in providing recommendations relating to ICANN's corporate governance framework.</p>			
Section II: Contributors			

At the time this report was prepared, a total of eight (8) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by first posting date with initials noted. Some contributors made more than one submission. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Registries Stakeholder Group	David Maher	RySG
The Coalition Against Domain Abuse	Yvette Miller	CADNA
Intellectual Property Constituency	Steven Metalitz/J.Scott Evans	IPC
At Large Advisory Committee	ICANN At Large Staff	ALAC

Individuals:

Name	Affiliation	Initials
Kieren McCarthy	.NXT Inc.	KM

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments 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).

The RySG did not generally comment on the documents, but did make a specific recommendation that the loyalty clause in the Code of Conduct refer to protection of the public interest instead of ICANN's interest. The RySG proposed the loyalty clause to be replaced with:

““Loyalty. Board Members should not be, or appear to be, subject to influences, interests or relationships that conflict with the interests of ICANN or the public interest. Board Members shall act so as to protect the interests of the Internet community as a whole and shall serve those interests over those of any other person or group or constituency of ICANN.”

CADNA stated that the revised documents represent a “step in the right direction” in building global confidence in ICANN however the Board’s actions will ultimately determine global confidence and the ICANN Board should fully commit to the new Policy and its more stringent obligations. CADNA commented that stronger provisions should be included such as preventing conflicts of interests when Board members leave ICANN. CADNA suggested that this could be achieved by adding a one-year “non-serve” clause prohibiting Covered Persons from accepting certain positions.

The IPC stated its was unable to offer substantive comments due to the following reasons: (i) 21 day

comment period being inadequate; (ii) the comment period commenced during the distraction of the Costa Rica public meeting and 13 other public comments open at the same time; and (iii) documents are 'incomplete' and subject to two other ongoing Board reviews which may result in further changes to the review documents.

KM agreed with points raised by RySG and the IPC. KM submitted that the treatment of "Potential Perceived Conflict" as equivalent to a "Potential Direct Conflict" in the Board Conflicts of Interest Policy was an unnecessary assumption and may lead to future problems. KM stated that the specific references to "General Counsel" in the Conflicts of Interest Policy should be replaced with "the relevant ICANN staff member". KM also expressed a preference for the use of plain English, rather than the legalistic language used.

ALAC submitted that ICANN should adopt and apply the language of the Affirmation of Commitments to the issue of conflicts of interest. ALAC views ICANN's current conflicts of interest implementation as having serious imbalances, which ALAC says is now below the standard of internet user community expectations. ALAC also concurred with the views of the other commenters. ALAC submitted its concern that some commercial entities likely to benefit from the new gTLD program were formed by ex-employees or ex-volunteers of ICANN and the ICANN Board that were involved in designing the policies that will apply to these entities. Whilst acknowledging the creation of the non-conflicted New gTLD Program Committee, ALAC expressed its regret that the Board Chair and Vice Chair are not part of the committee. ALAC recommends forming a cross-community Commission/Task Force to examine ICANN conflicts of interest at all levels as well as any structural impediments to ICANN dealing with conflicts of interest. ALAC proposes the Commission be able to engage recognized corporate governance experts to help develop a conflicts of interest framework. The ALAC further proposes that the ALAC would be represented in the Commission.

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.

Two commenters stated their general view that the revised documents were slight improvements to the existing corporate governance documents however more improvements could be made. Still others suggested that they could not make general comments because more work is still in process. It should be noted that the documents themselves show that this is just the first step toward enhancements. More changes are expected and ICANN is committed to making ongoing improvements as deemed appropriate.

One commenter noted that there was some unnecessary language included and that the documents appeared too legalistic. While ICANN must include particular language in order to satisfy all legal requirements and ensure that all intended areas are covered, ICANN will endeavor to determine if a simpler guide to the documents can be developed without compromising the intent.

One commenter recommended that the loyalty clause in the Director's Code of Conduct refer to protection of the public interest and interests of the internet community instead of ICANN's interests. This will be considered, but must be balanced with a director's legal duty of loyalty.

One commenter suggested adopting a one-year non-serve clause, which prohibits Covered Persons from accepting certain positions. The Board has already adopted such a resolution with respect to New gTLDs and is open to discussing further suggestions.

One group suggested the formation of a cross-community Commission to examine ICANN conflicts of interest at all levels with the ability to engage recognized corporate governance experts to help develop a conflicts of interest framework. It should be noted that ICANN has engaged three sets of recognized corporate governance experts to enhance ICANN's overall conflicts of interest/ethics framework. The goal is that the parallel tracks of review will lead to a comprehensive set of improvements and enhancements to ICANN's Ethics and Conflicts materials that make sense practically as well as legally.