

# 2012-05-06-Resolutions-BdMtg



## 1. Consent Agenda

Resolved, the following resolutions in this Consent Agenda are approved:

### 1. Ratification of Global Policy Proposal From ASO for Post Exhaustion IPv4 Allocation Mechanisms by the IANA (2012-05-06-01)

Whereas, the last five unicast IPv4 /8s were allocated to the five RIRs in accordance with Global Policy on 3 February 2011.

Whereas, there is currently no policy mechanism for redistributing IPv4 address space between RIRs.

Whereas, the addressing community has developed and reached consensus on a policy proposal allowing returned IPv4 address space to be shared equally between all five RIR regions.

Whereas, the Board on 21 April 2011 resolved to request ICANN staff to track the development of this policy proposal in background reports and such reports have been submitted regularly.

Whereas, on 13 March 2012, the ASO Address Council submitted the policy proposal to ICANN Board for ratification.

Whereas, the proposal was published for public comments from 14 March 2012 until 4 April 2012, during which time no comments were submitted.

Resolved (2012.05.06.xx), that the Global Policy for Post Exhaustion IPv4 Allocation Mechanisms by the IANA is ratified in line with clause 9 of Attachment A to the 2004 ASO MoU.

*Rationale for Resolution 2012.05.06.xx*

*The proposed action is intended to ratify a policy proposal that has achieved consensus in all five addressing communities and to enable implementation of the policy by ICANN in performing the IANA functions. The action to be taken does not entail any budgetary consequences in and of itself, nor any potential negative effects. It is important to take this action now to respect the 60-day window for Board decision stipulated in the ASO MoU.*

**2. .CAT RSEP Request to Allow Whois Changes (2012-05-06-02)**

Whereas, PuntCAT submitted a Request pursuant to ICANN's Registry Services Evaluation Policy to amend the .CAT Registry Agreement to allow for Whois changes to comply with Spanish and EU data protection legislation.

Whereas, ICANN evaluated the proposed amendment to the .CAT Registry Agreement as a new registry service pursuant to the Registry Services Evaluation Policy, did not identify any security, stability or competition issues, and posted an amendment for public comment and Board consideration (<http://www.icann.org/en/news/announcements/announcement-20jan12-en.htm>).

Whereas, the potential issues cited during the public comment period and by ICANN were addressed by PuntCAT's responses. Whereas, approving the proposal would prevent puntCAT domain registrants who are individuals to have their contact information from appearing in the puntCAT Whois when their domains are queried. In contrast, registrants representing businesses are not supposed to have this option, i.e. they are obliged to publish their contact information in the Whois.

RESOLVED (2012.05.06.xx), the amendment to allow Whois changes in .CAT is approved, and the President and General Counsel are authorized to take such actions as appropriate to implement the amendment.

*Rationale for Resolution 2012.05.06.xx*

*ICANN's stakeholder relations, legal, and technical teams reviewed the RSEP proposal for competition and DNS stability issues and found none.*

*According to the Registry, this service is endorsed by law enforcement and data protection agencies representatives from Catalonia, Spain and the EU, as indicated in the RSEP annexes.*

*puntCAT notes that the GAC communiqué issued on March the 28th, 2007 states the following:*

*"2.2 The GAC recognizes that there are also legitimate concerns about...conflicts with national laws and regulations, in particular, applicable privacy and data protection laws"  
([http://gac.icann.org/system/files/GAC\\_28\\_Lisbon\\_Communique.pdf](http://gac.icann.org/system/files/GAC_28_Lisbon_Communique.pdf))*

*ICANN held a public comment period from 20 January 2012 to 10 February 2012. During this time, the puntCAT proposal received four comments, three in support and one, from IPC, in opposition. The summary of the comments is available below. Fundacio PutCAT has conducted consultations with relevant data protection agencies representatives from Catalonia, Spain and the EU, as well as informal consultations with experts on the subject. The relevant authorities named by puntCAT are: the Art. 29 Working Group; the independent EU Advisory Body on Data Protection and Privacy; the Spanish Data protection Authority; and Catalan Data Protection Authority.*

*Per Fundació puntCAT, this request is the direct consequence of an increase in data protection concerns in the .cat community. The concerns have been directly addressed to Fundació puntCAT throughout many registrants' petitions to allow private whois, as well as a general trend in the data protection fora that have specifically dealt with the subject. In that regard, see the documents referred above.*

*Registrars were consulted and informed in a meeting held on April 14th, 2011, between puntCAT and its registrars. The meeting had the whois system change proposal as one of its main topics, and none of the registrars attending the meeting had any objections to the proposal.*

*The proposed amendment was submitted for public comment support and one in opposition from the IPC.*

*In its reply to IPC concerns, the PuntCAT registry continues to affirm that the proposed changes are in alignment with how the data protection framework must be interpreted when addressing the challenges posed by the Whois system. It also states that “the language used by the Spanish data protection Agency is, in our understanding, clear enough to proceed with the changes as proposed. puntCAT believes it would be a severe irresponsibility not to allow us to proceed with the changes. Delaying or, even worse, preventing puntCAT from abiding by the data protection regulation would put the Registry in a very risky legal situation, from which serious economic liabilities could derive.”*

*In the past, ICANN received and, after public comment, approved a similar request from Telnic Ltd, the .tel registry.*

*See:*

*<http://www.icann.org/en/registries/rsep/index.html#2007004>. Telnic is similarly situated, i.e., subject to European privacy law.*

### 3. Compensation Committee Charter

Whereas, the Compensation Committee is currently operating under a Charter approved in 2005, available at <http://www.icann.org/en/groups/board/compensation/charter>.

Whereas, as part of the Compensation Committee's obligation to review its operations and make appropriate recommendations for updates or enhancements, on 4 May 2012 the Compensation Committee recommended that its Charter be revised to better reflect the Committee's current operations. The revised Charter also incorporates the standard language for Board Committee Charters as previously approved by the Board Governance Committee. See <http://www.icann.org/en/minutes/resolutions-06mar09.htm#10>.

Resolved (2012.05.xx), the revised Charter of the Compensation Committee is approved.

*Rationale for Resolution 2012.05.06.xx*

*Approving the revised Compensation Committee charter at this time makes sense as the revised version better reflects the current operations of the Committee than the prior version, which was approved in 2005. The Charter also now conforms to all other committee charters. In developing the revised Charter both best practices as well as the actual operations of ICANN's Compensation Committee were reviewed and considered significant to approve the revised charter.*

*The approval of the revised Compensation Committee Charter should have a positive public effect in that it increases the accountability and transparency of the organization and aligns with the Committee's current activities and best practices.*

*There is no financial impact on ICANN or the community by revising the Compensation Committee Charter. Confirmation of the Compensation Committee's mandate through revision to its Charter does not present any impact on the systemic security, stability and resiliency of the domain names system.*

#### **4. Overall Compensation Framework**

Whereas, the retention of high calibre staff is essential to ICANN's operations and ICANN desires to ensure competitive compensation for staff.

Whereas, ICANN's current Compensation Framework establishes a target of compensation for staff between the 50th and 75th percentile of comparable for profit organizations.

Whereas, independent compensation expert consultant Towers Watson has recommended that ICANN's Compensation Framework be updated to also include review of comparable compensation of staff from not for profit organizations and high technology organizations.

Whereas, the compensation expert consultant's recommendation is consistent with ICANN's current compensation practices and goals.

Whereas, the Compensation Committee evaluated and agrees with the compensation consultant's recommendation.

Resolved (2012.05.xx), the Board adopts the updated Compensation Framework recommended by the independent expert compensation consultant and instructs staff to implement it consistent with ICANN's compensation practices.

*Rationale for Resolution 2012.05.06.xx*

*ICANN's compensation philosophy is to ensure that remuneration provided to staff is competitive globally and that it engenders the appropriate motivation for high performance toward agreed objectives. Specifically, as stated in ICANN's Compensation Practices previously approved by the Board (see <http://www.icann.org/en/financials/compensation-practices-31jan10-en.pdf>), ICANN maintains a "[c]ommitment to continued payment in the salary span of 50th to 75th percentile of relevant comparable companies of a similar size and complexity to ICANN, with the actual salary within this band determined by the individual's experience and talent and market position." This Framework, which was initially based on a 2006 survey by outside compensation experts, included comparable for-profit entities. In order to ensure best practices in staff compensation, the Compensation Committee called for a review of the Compensation Framework established in 2006.*

*ICANN's independent compensation expert consultant, Towers Watson (TW), has conducted a thorough analysis of ICANN's existing Compensation Framework. TW advised that the comparable organizations ICANN uses in setting staff compensation be updated to include, not only general for profit organizations, but also not for profit and high technology organizations. Including all three "buckets" of comparable organizations has been recommended to ensure that ICANN is using the right mix and of comparables in setting staff compensation levels. Making this change provides additional transparency to ICANN's compensation practices and improves the precision of the market comparables.*

*As part of its mandate, the Compensation Committee evaluated the consultant's recommendation and has endorsed the adopting of the updated Compensation Framework. Doing so will have likely some financial impact on ICANN, but any*

*such impact will be budgeted for as part of ICANN's regular budgeting activities. This action is not anticipated to have any impact on the security, stability or resiliency of the domain name system.*

#### **5. IRTP Part B, Recommendation 8 (2012-05-06-03)**

Whereas on 24 June 2009, the GNSO Council launched a Policy Development Process (PDP) on the Inter-Registrar Transfer Procedure Part B (IRTP Part B) addressing five charter questions, set forth at <https://community.icann.org/display/gnsoirtpb/3.+WG+Charter>.

Whereas the PDP followed the prescribed PDP steps as stated in the Bylaws, resulting in a Final Report delivered on 30 May 2011.

Whereas the IRTP Part B Working Group (WG) reached full consensus on the recommendations in relation to each of the five issues outlined in the Charter.

Whereas in relation to recommendation #8, the GNSO Council resolved at its meeting on 22 June to request ICANN Staff to provide a proposal concerning standardizing and clarifying Whois status messages relating to Registrar Lock Status, taking into account the IRTP Part B WG deliberations in relation to this issue (see IRTP Part B Final Report - (Recommendation 8)). Upon review of the proposal, the GNSO Council would consider whether to approve the recommendation.

Whereas ICANN staff developed the proposal in consultation with the IRTP Part B Working Group, which was put out for public comment (see <http://www.icann.org/en/public-comment/irtp-b-staff-proposals-22nov11-en.htm>).

Whereas comments were received from the Intellectual Property Constituency, considered by the GNSO Council, and the proposal was updated accordingly for GNSO Council consideration.

Whereas the GNSO Council reviewed and discussed the proposal in relation to IRTP Part B recommendation #8 and unanimously adopted the recommendation and proposal at its meeting on 16 February 2012 (see <http://gns0.icann.org/resolutions/#201202>).

Whereas the GNSO Council vote met and exceeded the required voting threshold to impose new obligations on ICANN contracted parties.

Whereas after the GNSO Council vote, a 21-day public comment period was held on the approved recommendation, and the comments have been summarized and considered (<http://www.icann.org/en/news/public-comment/report-comments-irtp-b-rec8-16apr12-en.pdf>).

Resolved (2012.05.06.xx), the Board adopts the GNSO Council Policy Recommendations amending the Inter-Registrar Transfer Policy set forth at <http://www.icann.org/en/transfers/policy-en.htm>.

Resolved (2012.05.06.xx), the CEO is to develop and complete an implementation plan for these Recommendations and continue communication with the community on such work.

*Rationale for Resolution 2012.05.06.xx*

**Why is this issue addressed now?**

*The Inter-Registrar Transfer Policy (IRTP) is a consensus policy that was adopted in 2004 which provides for a straightforward process for registrants to transfer domain names between registrars. The GNSO Council established a series of five*

*Working Groups (Parts A through E) to review and consider various revisions to this policy.*

*The IRTP Part B PDP is the second in a series of five scheduled PDPs addressing areas for improvements in the existing policy. The IRTP Part B Working Group has addressed five issues focusing on domain hijacking, the urgent return of an inappropriately transferred name, and lock status. Most of these recommendations have already been adopted by the GNSO Council and the ICANN Board. In relation to recommendation #8, a proposal from staff was requested. Following consultations with the IRTP Part B Working Group and a public comment forum on the Staff Proposal, ICANN Staff submitted its proposal to the GNSO Council. Following this, additional comments were submitted by the Intellectual Property Constituency. The GNSO Council reviewed the comments and the updated staff proposal, which was submitted addressing the comments provided by the IPC. The GNSO Council approved IRTP Part B Recommendation #8 and the updated staff proposal unanimously at its meeting on 16 February 2012 (see <http://gns0.icann.org/resolutions/-201202>). The IRTP Part B PDP Final Report received unanimous consensus support from the IRTP Part B Working Group as well as the GNSO Council.*

**What is the proposal being put forward for Board consideration?**

*Recommendation #8 recommends standardizing and clarifying WHOIS status messages regarding Registrar Lock status. The goal of these changes is to clarify why the Lock has been applied and how it can be changed. Based on discussions with technical experts, the IRTP Part B WG does not expect that such a standardization and clarification of WHOIS status messages would require significant investment or changes at the registry/registrar level. The IRTP Part B WG recommended that ICANN staff is asked to develop an implementation plan for community consideration which ensures that a technically*

*feasible approach is developed to implement this recommendation.*

*The ICANN Staff proposal agrees that the standardization and clarification of WHOIS status messages does not require significant investment or changes at the registry/registrar level. As outlined in the IRTP Part B Final Report, it is possible to associate each EPP status value with a message that explains the meaning of the respective status value. Registrars would be required to display a link to information on each status code directly next to the status in the output, for example: "Status: ClientLock <http://www.internic.net/status/html/clientlock>". This link would then direct to an ICANN controlled web page where the relevant status code information as described in the 'EPP Status Codes, what do they mean and why should I know?'<sup>1</sup> is posted. ICANN will also post translations of the status information. The web page can make use of localization information from the browser the user is using to display the web page in the related language. The requirement for registries and registrars to provide this link and ensure uniformity in the message displayed could be implemented as a standalone 'WHOIS Status Information Policy' or as an addition to the IRTP. In order to avoid potential blocking or stripping out of URLs from WHOIS output for valid reasons, registrars would be required to not remove Internic.net hyperlinks (or particularly the Internic.net status hyperlink) from their WHOIS output. In addition to the link, registrars would be required to include in the WHOIS output a note that would state "For more information on WHOIS status codes, please visit Internic.net" where the link to the information would be posted.*

**Outreach conducted by the Working Group to solicit views of groups that are likely to be impacted:**

*Public comment forums were held by the Working Group on*

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<sup>1</sup> The IRTP Part B Working Group, with the support of ICANN Staff developed this document, which provides an overview of EPP Status Codes and what they mean (see Annex F of the [IRTP Part B Final Report](#) [PDF, 972 KB] – EPP Status Codes, what do they mean and why should I know?)

*the initiation of the PDP, the Initial Report, the proposed Final Report and the Staff Proposal on Recommendation #8 in addition to regular updates to the GNSO Council as well as workshops to inform and solicit the input from the ICANN Community at ICANN meetings (see for example, Brussels Meeting and San Francisco Meeting). Constituency / Stakeholder Group Statements were submitted (see <https://community.icann.org/display/gnsoirtpb/IRTP+Part+B>). All comments received were reviewed and considered by the IRTP Part B PDP WG (see section 6 of the IRTP Part B Final Report). In addition, as prescribed by the ICANN Bylaws, a public comment forum was held on the recommendations to be considered by the ICANN Board.*

**What concerns or issues were raised by the community?**

*Following the closing of the public comment forum on the staff proposal (no comments received) and the submission of the proposal to the GNSO Council, the Intellectual Property Constituency submitted a number of comments, which ICANN staff responded to by submitting an updated proposal. The comments and updated proposal were considered as part of the GNSO Council deliberations. Subsequently, the GNSO Council adopted the recommendation and updated ICANN Staff proposal unanimously. Following the adoption by the GNSO Council, another public comment forum was opened on the recommendation and staff proposal. Two comments were received, but these comments did not require changes to the recommendation and/or staff proposal in the opinion of ICANN Staff (see <http://www.icann.org/en/news/public-comment/report-comments-irtp-b-rec8-16apr12-en.pdf>).*

*What significant materials did the PDP Working Group and GNSO Council review outlining the support and/or opposition to the proposed recommendations?*

*The materials and input reviewed by the IRTP Part B PDP Working Group are outlined in the IRTP Part B Final Report, which also outlines the full consensus support of the IRTP Part*

*B Working Group for this recommendation. In addition to the regular updates as described above, the GNSO Council reviewed this Final Report and the ICANN Staff proposal, as well as the comments submitted by the IPC and Staff's response to those comments.*

*What factors the GNSO Council found to be significant?  
The recommendation was developed by the IRTP Part B Working Group following the GNSO Policy Development Process as outlined in Annex A of the ICANN Bylaws and has received the unanimous support from the GNSO Council. As outlined in the ICANN Bylaws, the Council's unanimous (supermajority) support for the motion obligates the Board to adopt the recommendation unless by a vote of more than 66%, the Board determines that the policy is not in the best interests of the ICANN community or ICANN. In addition, transfer related issues are the number one area of complaint according to data from ICANN Compliance. Improvements to the IRTP have the potential to reduce the number of complaints, in addition to providing clarity and predictability to registrants as well as registrars.*

*Are there positive or negative community impacts?  
Improvements to the IRTP have the potential to reduce the number of complaints, in addition to providing clarity and predictability to registrants as well as registrars. Adoption of the recommendations will require changes in processes for registrars, but these are considered to have a minimum impact and necessary in order to address the issues that are part of this Policy Development Process. The recommendations, if implemented, would usefully clarify and enhance the IRTP, to the advantage of all parties concerned.*

*Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?*

*Apart from those changes required in process for registrars as outlined above, no other fiscal impacts or ramifications on ICANN; the community; and/or the public are expected.*

*Are there any security, stability or resiliency issues relating to the DNS?*

*There are no security, stability, or resiliency issues related to the DNS if the Board approves the proposed recommendations.*

## **2. MAIN AGENDA:**

### **1. APPROVAL OF STRATEGIC PLAN**

Resolved (2012.05.06.xx), the Board approves the July 2012-June 2015 Strategic Plan, and directs the President and CEO to move forward with the Internationalization survey and community-based operational planning process based on the strategic objectives as set forth in the plan. The aspects of the 2012-2015 Strategic Plan that cover the expansion of ICANN's international presence and engagement efforts are deferred pending further direction from the Board.

*Rationale for Resolution 2012.05.06.xx*

*To remain accountable to the global Internet community, the Board is taking this action to allow for community input on the further planning for ICANN's international presence and engagement. To that end, there will first be a community survey on these items, and a later paper that will be the subject of public comment and discussion. In addition, continued work towards these efforts as set forth in the 2011-2014 Strategic Plan is not prudent, therefore those portions of the 2011-2014 Strategic Plan are deferred.*

*After review of these inputs, and as appropriate to respond to inputs, initiatives to expand ICANN's international presence and engagement may be updated within the 2012-2015*

*Strategic Plan, and included within the 2012-2013 Operating Plan. In order to allow for the 2012-2013 operational planning cycle to proceed, the Board approves the 2012-2015 Strategic Plan.*

*While there will likely be a fiscal impact as a result of this work, the fiscal impact of undertaking the survey and review process is minimal. Further, the deferral of current initiatives within the 2011-2012 Operating Plan regarding the further allocation or reallocation of staff and resources that relate to ICANN's international presence and engagement will preserve resources from having to be reallocated as necessary after this review is complete.*

*This action is not expected to have any impact on the security or the stability of the DNS.*

## **2. RATIFICATION OF DECISIONS OF CONFLICTS & ETHICS SUBCOMMITTEE**

Whereas, ICANN is committed to attaining the highest ethical standard to ensure the legitimacy and sustainability of the multi-stakeholder model.

Whereas, ICANN's current corporate governance documents, as set out at <http://www.icann.org/en/documents/governance/>, include a Conflicts of Interest Policy and Board Code of Conduct (including ethical guidelines and confidentiality provisions).

Whereas, on 8 December 2011, the Board adopted specific, heightened conflicts of interest requirements to apply to the New gTLD Program, in furtherance of ICANN's commitment to demonstrating that it will treat decisions approving any new gTLD application in an ethical manner and with care to avoid even an appearance of a conflict of interest.

Whereas, pursuant to its charter, the Board Governance Committee (the “BGC”) is responsible for the administration of the Conflicts of Interest Policy.

Whereas, the BGC has established a subcommittee on ethics and conflicts (the “Subcommittee”), comprised of independent Directors who are not conflicted on new gTLDs, for the purpose of assessing conflicts of interest of all Board members (including Directors and Liaisons). The Subcommittee reviewed all Board member statements of interest to evaluate whether there are any potential or actual conflicts of interest in relation to the New gTLD Program.

Whereas, at the Board’s February 2012 workshop in Los Angeles, California, the Subcommittee completed its initial identification of Board members (including liaisons) with potential or actual conflicts of interest in relation to the New gTLD Program.

Whereas, each Director or Liaison so identified has had the opportunity to discuss the facts and circumstances that resulted in the identification of the potential or actual conflict of interest prior to a final determination being made by the Subcommittee.

Whereas, the Subcommittee has completed its determination regarding each Director or Liaison regarding the existence of a potential or actual conflict of interest in relation to the New gTLD Program, including (where applicable) potential steps towards mitigation to permit such Board members to participate in Board discussions and deliberations regarding the New gTLD Program.

Resolved (2012.05.06.xx), the Board ratifies and adopts the Subcommittee's determinations regarding Directors and Liaisons with potential or actual conflicts of interest as it relates to the New gTLD Program.

Resolved (2012.05.06.xx), if deliberations relating to the New gTLD Program call for expertise and experience about the industry operations, or any other matters, that could be provided by any of the Directors or Liaisons who have been determined by the Subcommittee to have potential or actual conflicts of interests as it relates to the New gTLD Program, such Board members or Liaisons can be asked to participate in the limited discussion requiring such expertise and experience. Independent experts could be similarly invited to participate in the deliberations. If such expertise is sought, the nature of the discussion and the expert will be identified in the meeting minutes or notes, as applicable.

*Rationale for Resolution 2012.05.06.xx*

*Over the past several months, ICANN has placed a strong emphasis on the need for enhancing ICANN's policies relating to conflicts of interest, ethics, confidentiality and an overall code of conduct. During the Singapore meeting, the President and CEO identified such issues as crucial given that the New gTLD Program was entering into a new phase with Board approval, which was taken on 20 June 2011. In addition, the community has been calling for a thorough review of these policies. Accordingly, ICANN has determined that it should strive to achieve a highest standards in both the documentation of polices and the adherence to polices relating to conflicts of interest ethics, confidentiality and code of conduct.*

*Part of ICANN's commitment to this standard is demonstrated through its rigorous application of its Conflicts of Interest policy through the institution of a Subcommittee of the Board Governance Committee, comprised solely of Independent Directors and focused on the application of ethics and conflicts policies and practices. Here, the Subcommittee's determination of which directors and liaisons have potential or actual conflicts of interest in relation to the New gTLD*

*Program, and the Board's acceptance of those determinations, help ICANN remain accountable to the community and their expectations that ICANN's deliberations and decision making is not affected by individual conflicts of interest. The increased attention and review on this subject is expected to have a positive effect on ICANN and the community. There is no financial impact to the organization as a result of this decision, and this decision will not have any impact on the security or the stability of the DNS.*

### **3. UPDATE OF NEW GTLD PROGRAM COMMITTEE MEMBERSHIP**

Whereas, on 10 April 2012 the Board created the New gTLD Program Committee, to which it delegated all legal and decision making authority of the Board relating to the New gTLD Program (for the round of the Program, which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round) as set forth in its Charter, which excludes those things that the Board is prohibited from delegating by law, or pursuant to Article XII, Section 2 of the ICANN Bylaws.

Whereas, the Charter of the New gTLD Program Committee requires that it be comprised of all of the voting Directors who are not conflicted with respect to new gTLDs, and the Committee may also include non-voting Liaisons who are not conflicted with respect to new gTLDs.

Whereas, Thomas Narten has been determined by the Board Governance Committee's Subcommittee for Conflicts & Ethics to have mitigated the previously-identified conflict of interest with respect to the New gTLD Program, and that determination has been accepted by the Board.

Resolved (2012.05.06.xx), Thomas Narten is hereby approved as a non-voting Liaison member of the New gTLD Program Committee.

Resolved (2012.05.06.xx), all members of the New gTLD Program Committee reinforce their commitment to the 8 December 2011 Resolution of the Board (Resolution 2011.12.08.19) regarding Board member conflicts, and specifying in part: "Any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board made the decision on the application."

*Rationale for Resolution 2012.05.06.xx*

*The Board reaffirms its Rationale for Resolutions 2012.04.10.01-2012.04.10.04, stating in full: In order to have efficient meetings and take appropriate actions with respect to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook, the Board decided to create the "New gTLD Program Committee" in accordance with Article XII of the Bylaws and has delegated decision making authority to the Committee as it relates to the New gTLD Program for the current round of the Program which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round.*

*Establishing this new Committee without conflicted members, and delegating to it decision making authority, will provide some distinct advantages. First, it will eliminate any uncertainty for conflict Board members with respect to attendance at Board meetings and workshops since the New gTLD Program topics can be dealt with at the Committee level. Second, it will allow for actions to be taken without a meeting by the committee. As the Board is aware, actions without a meeting cannot be taken unless done via electronic submission by unanimous consent; such unanimous consent cannot be achieved if just one Board member is conflicted. Third, it will provide the community with a transparent view*

*into the Board's commitment to dealing with actual, potential or perceived conflicts.*

*This resolution should have a positive impact on the community and ICANN as a whole as the New gTLD Program Committee will be able to take actions relating to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook without any question of conflict arising.*

*No fiscal impact is anticipated as a result of this action and there will be no impact on the security, stability no resiliency of the domain name system.*

#### **4. ETHICS & CONFLICT OF INTEREST PROGRAM (2012-05-06-04)**

Whereas, one stage of ICANN's three-stage review of its conflicts of interest and ethics regimes called for outside counsel that is familiar with ICANN, Jones Day, to perform a holistic review of ICANN's documented corporate governance policies and practices to make recommendations of how they can be approved.

Whereas, Jones Day recommended modifications to the Conflicts of Interest Policy, Code of Conduct and Expected Standards of Behavior in order to promote superior ethics, integrity and transparency into ICANN's deliberative processes.

Whereas, Jones Day also recommended the adoption of Corporate Governance Guidelines that provide a consolidated source of reference to ICANN's governance policies and practices.

Whereas, these four documents were posted for public comment, all of which were considered, and minor revisions were made to the Conflicts of Interest Policy and Code of Conduct to address those comments.

Whereas, the review of ICANN's conflicts and ethics practices is still underway, and further recommended changes to these documents may be identified as part of these reviews.

Whereas, the Board is committed to continue making improvements and enhancements to all of its conflicts and ethics practices and documentation, and recognizes that these documents may be further revised when further recommendations are made and accepted.

Resolved (2012.05.06.xx), the Board adopts the revised Conflicts of Interest Policy, revised Code of Conduct and revised Expected Standards of Behavior, as well as the new Corporate Governance Guidelines.

*Rationale for Resolution 2012.05.06.xx*

*Adopting the Revised Conflicts of Interest Policy, Code of Conduct and Expected Standards of Behavior, as well as the new Corporate Governance Guidelines is another step in ICANN's enhancements to its conflicts of interest and ethics practices. As announced in October 2011, ICANN is undertaking a three-part review of these practices, and the continued enhancements of the documented policies and practices is just one way to demonstrate ICANN's commitment to ensuring the legitimacy and sustainability of the ICANN multi-stakeholder model. The adoption of these documents does not represent an end to the conflicts and ethics review work; it is expected that each of these documents are to be seen as evolving, and subject to change pending the needs of the ICANN community. In addition, the continued work to review the conflicts and ethics practices may necessitate further revision, or the adoption of additional documents as necessary.*

*With the adoption of these documents, ICANN recognizes that demonstrating adherence to these guidelines, policies and codes is an essential part of a commitment to enhance the*

*organization's conflicts and ethics practices. Having strong documents are only a single part of the equation; it is now up to the Board and the ICANN community as a whole to meet the heightened practices set out therein in order to start putting the enhancements into action.*

*In response to the public comment received on these documents, ICANN has already incorporated a specific change to reflect individual Board member obligations to be free of conflicts that may impair ICANN's ability to operate for the benefit of the Internet community as a whole. Other comments, such as a request for documentation to be in less legalistic language, are under consideration.*

*Taking this action is expected to positively impact the ICANN community through the adoption of heightened practices to address and mitigate the potential for conflicts of interest in ICANN decision-making. While these changes are to be viewed as steps in the process of an ongoing review of conflicts and ethics practices, it is important to adopt incremental changes as feasible. The adoption of these guidelines and policy revisions is not expected to have a fiscal impact on ICANN, nor is this expected to have any impact on the security, stability and resiliency of the domain name system.*

# **2012-05-06-01-Board submission Global Policy for Post Exhaustion IPv4 Allocation Mechanisms by the IANA**

**ICANN BOARD SUBMISSION NO. 2012-05-06-01**

**TITLE:** **Global Policy for Post Exhaustion IPv4 Allocation Mechanisms by the IANA**

**PROPOSED ACTION:** **For Board Approval**

**EXECUTIVE SUMMARY:**

In 2009 the addressing community began developing a policy allowing an IANA-mediated redistribution of returned IPv4 address blocks. This proposed policy is the third attempt at consensus and the first to be accepted by all five RIRs' policy making communities. The text of the proposal is available here. If ratified, it will allow RIRs to return IPv4 address space to an IANA-managed pool from which equal parts will be allocated to all five RIRs in a deterministic manner on a regular schedule, once triggered. For further information, see the posted Background Report and also note that no comments were provided during the recent Public Comment Period.

**ASO AC RECOMMENDATION:**

The ASO AC's advice to the Board is as follows: "The Address Council has completed a final review of this global policy proposal. We have found that:

1. the published policy development process of each of the RIRs was followed, and
2. the significant viewpoints of interested parties were adequately considered.

We ask that the ICANN Board ratifies this global policy proposal in fulfilment of Articles 8 and 9 of Attachment A in the ASO MoU by following the review procedure developed to handle submissions by the ASO Address Council."

**PROPOSED RESOLUTION:**

Whereas, the last five unicast IPv4 /8s were allocated to the five RIRs in accordance with Global Policy on 3 February 2011;

Whereas, there is currently no policy mechanism for redistributing IPv4 address space between RIRs;

Whereas, the addressing community has developed and reached consensus on a policy proposal allowing returned IPv4 address space to be shared equally between all five RIR regions;

Whereas, the Board on 21 April 2011 resolved to request ICANN staff to track the development of this policy proposal in background reports and such reports have been submitted regularly;

Whereas, on 13 March 2012, the ASO Address Council submitted the policy proposal to ICANN Board for ratification;

Whereas, the proposal was published for public comments from 14 March 2012 until 4 April 2012, during which time no comments were submitted;

It is hereby **RESOLVED** (2012.xx.xx.\_\_\_[to be assigned by Secretary]) that the Global Policy for Post Exhaustion IPv4 Allocation Mechanisms by the IANA is ratified in line with clause 9 of Attachment A to the 2004 ASO MoU.

**RATIONALE:**

The proposed action is intended to ratify a policy proposal that has achieved consensus in all five addressing communities and to enable implementation of the policy by IANA. The action to be taken does not entail any budgetary consequences in and of itself, nor any potential negative effects. It is important to take this action now to respect the 60-day window for Board decision stipulated in the ASO MoU.

Submitted by:	Leo Vegoda Olof Nordling
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Date Noted:	12 October 2011
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# **2012-05-06-02-Board Submission CAT Request**

## BOARD SUBMISSION NO. 2012-03-03b

### SUBMISSION TITLE: .CAT WHOIS changes proposal for approval

#### Attachments:

- puntCAT Registry Services Evaluation Process request (5 October 2012)
- Redline of Appendix 5 of the punt CAT agreement reflecting the requested change
- Redline of Appendix S-Part VI of the punt CAT agreement reflecting the requested change
- puntCAT reply to IPC's opposing comment

### Current Environment and Recent Developments

On 5 October 2011, the Fundacio puntCAT's, the .cat registry, requested Whois changes to comply with Spanish and EU data protection legislation. The request was done in accordance with the Registry Services Evaluation Policy and process set forth at <http://www.icann.org/registries/rsep/rsep.html>. Based on the information provided, ICANN's did not identify any significant competition, security or stability issues.

According to the puntCAT Registry, the Spanish Data Protection Agency (DPA) requires that puntCAT domain registrants who are individuals need to be able to prevent their contact information from appearing in the puntCAT Whois when their domains are queried. In contrast, registrants representing businesses are not supposed to have this option, i.e. they are obliged to publish their contact information in the Whois.

In order to implement the proposed changes, the puntCAT registry system will be augmented to require the specification of the registrant's status (natural vs. legal person) when the domain is created. In addition, if the registrant is marked as an individual, a separate flag must be specified to indicate whether contact information shall be disclosed in the puntCAT Whois or not. Both flags may be updated and queried like other domain properties.

The implementation of this request requires an amendment to the .cat Registry Agreement signed 23 September 2005, which can be found here: <http://www.icann.org/en/about/agreements/registries/cat>.

## Recommendation

Balancing the case presented by puntCAT and the statements made by European governments, balanced against the negative commentary, it is recommended to approve the amendment request. Alternative, the Board could request supplemental materials from puntCAT.

As is the case with all Whois proposals, the amendment is likely to be controversial in some quarters – the public posting raised one negative comment.

## Summary of Public Comments (20 January 2012 – 10 February 2012)

### Comment in opposition:

1. “IPC urges that this request be denied, mainly for the following reasons:  
(1) There is no conflict between the registry’s contractual obligations to ICANN and its legal obligations under national law. The registry sought and received an opinion from the Spanish Data Protection Agency, which states unequivocally that the registry’s current policy of unrestricted public access to Whois data, as required by its registry agreement with ICANN, “is not contrary” to Spain’s data protection law and “does not violate” that law or its implementing regulations. (2) Approval of the proposal would raise serious questions about ICANN’s compliance with the Affirmation of Commitments, and would reflect unsound policy.” “Since there is nothing in “applicable law” to require any change in .cat’s current Whois practices, granting the registry’s request would seem to flagrantly violate the commitments ICANN made three years ago in the Affirmation of Commitments. On this ground as well the request should be denied.” **IPC (10 Feb 2012)**

### Comments in favor:

2. “The NCSG wishes to express its support for punctCAT’s proposed amendment to allow natural persons an opt-out measure by which some WHOIS data would be withheld from public view. The NCSG believes there are several types of institution that require similar opportunities to opt out from public display of their identity and address details. The NCSG further expresses concern that law enforcement and third party access to the data should be consistent with due process protections. We urge development of these disclosure procedures in conjunction with the Community.” **RG (17 Feb 2012)**
3. “AFNIC fully supports these proposed changes, which would demonstrate ICANN’s commitment to taking into account local laws, and represent a significant step forward in the directions set by the Affirmation of Commitments. The proposed changes should have a positive impact on data accuracy. It should be stressed that the .CAT registry also commits to providing full access to registrant data to Law Enforcement Agencies. Therefore, data protection does not create opportunities for misusing the domain names in any way.

We believe this system to be a significant improvement. It has the potential to fulfill two key objectives of the Affirmation of Commitments (and the Whois Review): improving data accuracy and facilitating queries from Law Enforcement Agencies.” **MW (20 Feb 2012)**

4. “I support the .cat WHOIS changes as proposed. Like mentioned by AFNIC, this will reinforce the confidence of private persons in the WHOIS system, knowing their personal data will be protected from scammers, spammers, as well as other parties who wish to bypass due legal processes and harass registrants directly.

It would be most welcome if ICANN could set up in future gTLD registry agreements provisions that would deal with such matters, without having to go through comments and approvals.” **PVW (27 Feb 2012)**

#### **Proposed Resolution:**

Whereas, PuntCAT submitted a Request pursuant to ICANN's Registry Services Evaluation Policy to amend the .CAT Registry Agreement to allow for Whois changes to comply with Spanish and EU data protection legislation.

Whereas, ICANN evaluated the proposed amendment to the .CAT Registry Agreement as a new registry service pursuant to the Registry Services Evaluation Policy, did not identify any security, stability or competition issues, and posted an amendment for public comment and Board consideration (<http://www.icann.org/en/news/announcements/announcement-20jan12-en.htm>).

Whereas, the potential issues cited during the public comment period and by ICANN were addressed by PuntCAT's responses.

Whereas, approving the proposal would prevent puntCAT domain registrants who are individuals to have their contact information from appearing in the puntCAT Whois when their domains are queried. In contrast, registrants representing businesses are not supposed to have this option, i.e. they are obliged to publish their contact information in the Whois.

RESOLVED (2012.05.06.xx), the amendment to allow Whois changes in .CAT is approved, and the President and General Counsel are authorized to take such actions as appropriate to implement the amendment.

*Rationale for Resolution 2012.05.06.xx*

*ICANN's stakeholder relations, legal, and technical teams reviewed the RSEP proposal for competition and DNS stability issues and found none.*

*According to the Registry, this service is endorsed by law enforcement and data protection agencies representatives from Catalonia, Spain and the EU, as indicated in the RSEP annexes.*

*puntCAT notes that the GAC communiqué issued on March the 28th, 2007 states the following:*

*“2.2 The GAC recognizes that there are also legitimate concerns about...conflicts with national laws and regulations, in particular, applicable privacy and data protection laws”*

*([http://gac.icann.org/system/files/GAC\\_28\\_Lisbon\\_Communique.pdf](http://gac.icann.org/system/files/GAC_28_Lisbon_Communique.pdf))*

*ICANN held a public comment period from 20 January 2012 to 10 February 2012. During this time, the puntCAT proposal received four comments, three in support and one, from IPC, in opposition. The summary of the comments is available below.*

*Fundacio PutCAT has conducted consultations with relevant data protection agencies representatives from Catalonia, Spain and the EU, as well as informal consultations with experts on the subject. The relevant authorities named by puntCAT are: the Art. 29 Working Group; the independent EU Advisory Body on Data Protection and Privacy; the Spanish Data protection Authority; and Catalan Data Protection Authority.*

*Per Fundació puntCAT, this request is the direct consequence of an increase in data protection concerns in the .cat community. The concerns have been directly addressed to Fundació puntCAT throughout many registrants' petitions to allow private whois, as well as a general trend in the data protection fora that have specifically dealt with the subject. In that regard, see the documents referred above.*

*Registrars were consulted and informed in a meeting held on April 14th, 2011, between puntCAT and its registrars. The meeting had the whois system change proposal as one of its main topics, and none of the registrars attending the meeting had any objections to the proposal.*

*The proposed amendment was submitted for public comment support and one in opposition from the IPC.*

*In its reply to IPC concerns, the PuntCAT registry continues to affirm that the proposed changes are in alignment with how the data protection framework must be interpreted when addressing the challenges posed by the Whois system. It also states that “the language used by the Spanish data protection Agency is, in our understanding, clear enough to proceed with the changes as proposed. puntCAT believes it would be a severe irresponsibility not to allow us to proceed with the changes. Delaying or, even worse, preventing puntCAT from abiding by the data protection regulation would put the Registry in a very risky legal situation, from which serious economic liabilities could derive.”*

*In the past, ICANN received and, after public comment, approved a similar request from Telnic Ltd, the .tel registry. See: <http://www.icann.org/en/registries/rsep/index.html#2007004>. Telnic is*

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**2012-05-06-03-Board Submission-IRTP Part B PDP Rec  
#8**

**ICANN BOARD SUBMISSION NO. 2012-05-06-03**

**TO:** ICANN Board of Directors  
**TITLE:** GNSO Council Recommendations IRTP Part B  
**PROPOSED ACTION:** Board Action to Approve

**EXECUTIVE SUMMARY:**

The Generic Names Supporting Organization (GNSO) Council unanimously approved at its meeting on 16 February 2012 a proposed change related to the Inter-Registrar Transfer Policy (IRTP) and is now seeking Board review and approval. This recommendation is made following completion of the IRTP Part B Policy Development Process (PDP) and concerns the implementation of Recommendation #8 and the accompanying staff proposal relating to the standardization and clarification of Whois status messages regarding Registrar Lock status.

The goal of these changes is to clarify why the Registrar Lock has been applied and how it can be changed. If adopted, registrars would be required to associate each EPP status value with a link to an ICANN controlled web page where the relevant status code information as described in the ‘EPP Status Codes, what do they mean and why should I know?’<sup>1</sup> is posted. ICANN will also post translations of the status information. The web page can make use of localization information from the browser the user is using to display the web page in the related language. In addition to the link, registrars would be required to include in the WHOIS output a note that would state "For more information on WHOIS status codes, please visit Internic.net" where the link to the information would be posted.

Under the ICANN Bylaws, the Council’s unanimous (supermajority) support for the motion obligates the Board to adopt the recommendation unless by a vote of more than 66%, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

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<sup>1</sup> The IRTP Part B Working Group, with the support of ICANN Staff developed this document, which provides an overview of EPP Status Codes and what they mean (see Annex F of the [IRTP Part B Final Report](#) [PDF, 972 KB] – EPP Status Codes, what do they mean and why should I know?)

The policy recommendations above, if approved by the Board, will impose new obligations on certain contracted parties. The GNSO Council's unanimous vote in favor of these items exceeds the voting threshold required at Article X, Section 3.9.f of the ICANN Bylaws regarding the formation of consensus policies.

The Annex (the GNSO Council Recommendations Report to the Board) to this submission provides the background and further details with regard to these recommendations.

**STAFF RECOMMENDATION:**

Staff recommends that the Board adopts the GNSO Policy Recommendation as a Consensus Policy modification to the Inter-Registrar Transfer Policy (IRTP). The recommendation, if implemented, would usefully clarify and enhance the IRTP, to the advantage of all parties concerned.

**PROPOSED RESOLUTION:**

Whereas on 24 June 2009, the GNSO Council launched a Policy Development Process (PDP) on the Inter-Registrar Transfer Procedure Part B (IRTP Part B) addressing five charter questions, set forth at

<https://community.icann.org/display/gnsoirtpb/3.+WG+Charter>;

Whereas the PDP followed the prescribed PDP steps as stated in the Bylaws, resulting in a Final Report delivered on 30 May 2011;

Whereas the IRTP Part B Working Group (WG) reached full consensus on the recommendations in relation to each of the five issues outlined in the Charter;

Whereas in relation to recommendation #8, the GNSO Council resolved at its meeting on 22 June to request ICANN Staff to provide a proposal concerning standardizing and clarifying Whois status messages relating to Registrar Lock Status, taking into account the IRTP Part B WG deliberations in relation to this issue (see IRTP Part B Final

Report - (Recommendation 8). Upon review of the proposal, the GNSO Council would consider whether to approve the recommendation;

Whereas ICANN staff developed the proposal in consultation with the IRTP Part B Working Group, which was put out for public comment (see <http://www.icann.org/en/public-comment/irtp-b-staff-proposals-22nov11-en.htm>);

Whereas comments were received from the Intellectual Property Constituency, considered by the GNSO Council, and the proposal was updated accordingly for GNSO Council consideration;

Whereas the GNSO Council reviewed and discussed the proposal in relation to IRTP Part B recommendation #8 and unanimously adopted the recommendation and proposal at its meeting on 16 February 2012 (see <http://gns0.icann.org/resolutions/#201202>);

WHEREAS the GNSO Council vote met and exceeded the required voting threshold to impose new obligations on ICANN contracted parties;

WHEREAS after the GNSO Council vote, a 21-day public comment period was held on the approved recommendation, and the comments have been summarized and considered (<http://www.icann.org/en/news/public-comment/report-comments-irtp-b-rec8-16apr12-en.pdf>);

RESOLVED (2011.xx.xx.\_\_) the Board adopts the GNSO Council Policy Recommendations in relation to IRTP Part B recommendation #8 amending the Inter-Registrar Transfer Policy set forth at <http://www.icann.org/en/transfers/policy-en.htm>.

RESOLVED (2011.xx.xx\_\_) the CEO is to develop and complete an implementation plan for these Recommendations and continue communication with the community on such work.

**RATIONALE FOR RESOLUTION:**

***Why is this issue addressed now?***

The Inter-Registrar Transfer Policy (IRTP) is a consensus policy that was adopted in 2004 which provides for a straightforward process for registrants to transfer domain names between registrars. The GNSO Council established a series of five Working Groups (Parts A through E) to review and consider various revisions to this policy.

The IRTP Part B PDP is the second in a series of five scheduled PDPs addressing areas for improvements in the existing policy. The IRTP Part B Working Group has addressed five issues focusing on domain hijacking, the urgent return of an inappropriately transferred name, and lock status. Most of these recommendations have already been adopted by the GNSO Council and the ICANN Board. In relation to recommendation #8, a proposal from staff was requested. Following consultations with the IRTP Part B Working Group and a public comment forum on the Staff Proposal, ICANN Staff submitted its proposal to the GNSO Council. Following this, additional comments were submitted by the Intellectual Property Constituency. The GNSO Council reviewed the comments and the updated staff proposal, which was submitted addressing the comments provided by the IPC. The GNSO Council approved IRTP Part B Recommendation #8 and the updated staff proposal unanimously at its meeting on 16 February 2012 (see <http://gns0.icann.org/resolutions/> - 201202). The IRTP Part B PDP Final Report received unanimous consensus support from the IRTP Part B Working Group as well as the GNSO Council.

***What is the proposal being put forward for Board consideration?***

Recommendation #8 recommends standardizing and clarifying WHOIS status messages regarding Registrar Lock status. The goal of these changes is to clarify why the Lock has been applied and how it can be changed. Based on discussions with technical experts, the IRTP Part B WG does not expect that such a standardization and clarification of WHOIS status messages would require significant investment or changes at the registry/registrar level. The IRTP Part B WG recommended that ICANN staff is asked to develop an implementation plan for community consideration which ensures that a technically feasible approach is developed to implement this recommendation.

The ICANN Staff proposal agrees that the standardization and clarification of WHOIS status messages does not require significant investment or changes at the registry/registrar level. As outlined in the IRTP Part B Final Report, it is possible to associate each EPP status value with a message that explains the meaning of the respective status value. Registrars would be required to display a link to information on each status code directly next to the status in the output, for example: "Status: ClientLock <http://www.internic.net/status/html/clientlock>". This link would then direct to an ICANN controlled web page where the relevant status code information as described in the 'EPP Status Codes, what do they mean and why should I know?'<sup>2</sup> is posted. ICANN will also post translations of the status information. The web page can make use of localization information from the browser the user is using to display the web page in the related language. The requirement for registries and registrars to provide this link and ensure uniformity in the message displayed could be implemented as a standalone 'WHOIS Status Information Policy' or as an addition to the IRTP. In order to avoid potential blocking or stripping out of URLs from WHOIS output for valid reasons, registrars would be required to not remove Internic.net hyperlinks (or particularly the Internic.net status hyperlink) from their WHOIS output. In addition to the link, registrars would be required to include in the WHOIS output a note that would state "For more information on WHOIS status codes, please visit Internic.net" where the link to the information would be posted.

***Outreach conducted by the Working Group to solicit views of groups that are likely to be impacted***

Public comment forums were held by the Working Group on the initiation of the PDP, the Initial Report, the proposed Final Report and the Staff Proposal on Recommendation #8 in addition to regular updates to the GNSO Council as well as workshops to inform and solicit the input from the ICANN Community at ICANN meetings (see for example, Brussels Meeting and San Francisco Meeting). Constituency / Stakeholder Group Statements were submitted (see <https://community.icann.org/display/gnsoirtpb/IRTP+Part+B>). All comments received were reviewed and considered by the IRTP Part B PDP WG (see section 6 of the IRTP

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<sup>2</sup> The IRTP Part B Working Group, with the support of ICANN Staff developed this document, which provides an overview of EPP Status Codes and what they mean (see Annex F of the [IRTP Part B Final Report](#) [PDF, 972 KB] – EPP Status Codes, what do they mean and why should I know?)

Part B Final Report). In addition, as prescribed by the ICANN Bylaws, a public comment forum was held on the recommendations to be considered by the ICANN Board.

***What concerns or issues were raised by the community?***

Following the closing of the public comment forum on the staff proposal (no comments received) and the submission of the proposal to the GNSO Council, the Intellectual Property Constituency submitted a number of comments, which ICANN staff responded to by submitting an updated proposal. The comments and updated proposal were considered as part of the GNSO Council deliberations. Subsequently, the GNSO Council adopted the recommendation and updated ICANN Staff proposal unanimously. Following the adoption by the GNSO Council, another public comment forum was opened on the recommendation and staff proposal. Two comments were received, but these comments did not require changes to the recommendation and/or staff proposal in the opinion of ICANN Staff (see <http://www.icann.org/en/news/public-comment/report-comments-irtp-b-rec8-16apr12-en.pdf>).

***What significant materials did the PDP Working Group and GNSO Council review outlining the support and/or opposition to the proposed recommendations?***

The materials and input reviewed by the IRTP Part B PDP Working Group are outlined in the IRTP Part B Final Report, which also outlines the full consensus support of the IRTP Part B Working Group for this recommendation. In addition to the regular updates as described above, the GNSO Council reviewed this Final Report and the ICANN Staff proposal, as well as the comments submitted by the IPC and Staff's response to those comments.

***What factors the GNSO Council found to be significant?***

The recommendation was developed by the IRTP Part B Working Group following the GNSO Policy Development Process as outlined in Annex A of the ICANN Bylaws and has received the unanimous support from the GNSO Council. As outlined in the ICANN Bylaws, the Council's unanimous (supermajority) support for the motion obligates the Board to adopt the recommendation unless by a vote of more than 66%, the Board determines that the policy is not in the best interests of the ICANN

community or ICANN. In addition, transfer related issues are the number one area of complaint according to data from ICANN Compliance. Improvements to the IRTP have the potential to reduce the number of complaints, in addition to providing clarity and predictability to registrants as well as registrars.

***Are there positive or negative community impacts?***

Improvements to the IRTP have the potential to reduce the number of complaints, in addition to providing clarity and predictability to registrants as well as registrars.

Adoption of the recommendations will require changes in processes for registrars, but these are considered to have a minimum impact and necessary in order to address the issues that are part of this Policy Development Process. The recommendations, if implemented, would usefully clarify and enhance the IRTP, to the advantage of all parties concerned.

***Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?***

Apart from those changes required in process for registrars as outlined above, no other fiscal impacts or ramifications on ICANN; the community; and/or the public are expected.

***Are there any security, stability or resiliency issues relating to the DNS?***

There are no security, stability, or resiliency issues related to the DNS if the Board approves the proposed recommendations.

Submitted by:	David Olive; Marika Konings
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# **2012-05-06-04-Board Submission-Conflicts-of-Interest- Review**

**ICANN BOARD SUBMISSION NO. 2012-05-06-04**

**TITLE:** **Conflicts of Interest Review**

**PROPOSED ACTION:** **For Board Consideration**

**EXECUTIVE SUMMARY:**

In March 2012, four documents prepared by Jones Day as part of its review of ICANN's corporate governance documentation were posted for public comment: A Revised Board Conflicts of Interest Policy, Revised Code of Conduct, Revised Expected Standards of Behavior, and Proposed Corporate Governance Guidelines (see <http://www.icann.org/en/news/public-comment/board-coi-review-11mar12-en.htm>).

In addition, a memo was posted in the same location describing the purpose of each document within ICANN's corporate governance structure. Jones Day's work is only one of the three parts of the Conflicts and Ethics Review currently underway. As a result of the public comment, minor changes have been introduced to two of the documents (the Conflict of Interest Policy and the Code of Conduct). It is recommended that the Board approve and adopt each of the four documents, recognizing that the reviews are still ongoing, and refinements and improvements should be considered and implemented as necessary.

The Annex to this paper provides each of the documents that the Board is being asked to approve and adopt (in clean and redline form), as well as some of the information from the explanatory memo to refresh the Board on how the documents form parts of ICANN's corporate governance practices.

**BOARD GOVERNANCE COMMITTEE RECOMMENDATION:**

The BCG recommends that the Board adopt the Revised Board Conflicts of Interest Policy, Revised Code of Conduct and Revised Expected Standards of Behavior as revised by Jones Day as part of its review of ICANN's corporate governance documentation. In addition, the BGC recommends that the Board adopt the proposed Corporate Governance Guidelines, which provide a source of reference to ICANN's governance policies and practices. Approving these documents today does not

represent the conclusion of the review, but will put into place a stronger conflicts of interest/code of conduct regime while the reviews are ongoing.

**PROPOSED RESOLUTION:**

Whereas, one stage of ICANN’s three-stage review of its conflicts of interest and ethics regimes called for a set of outside counsel that is familiar with ICANN, Jones Day, to perform a holistic review of ICANN’s documented corporate governance policies and practices to make recommendations of how they can be approved;

Whereas, Jones Day recommended modifications to the Conflicts of Interest Policy, Code of Conduct and Expected Standards of Behavior in order to promote superior ethics, integrity and transparency into ICANN’s deliberative processes.

Whereas, Jones Day also recommended the adoption of Corporate Governance Guidelines that provide a consolidated source of reference to ICANN’s governance policies and practices.

Whereas, these four documents were posted for public comment and minor revisions were made to the Conflicts of Interest Policy and Code of Conduct to address those comments.

Whereas, the review of ICANN’s conflicts and ethics practices is still underway, and further recommended changes to these documents may be identified.

Resolved (2012.05.xx.xx), the Board adopts the Revised Conflicts of Interest Policy, Revised Code of Conduct and Revised Expected Standards of Behavior, as well as the new Corporate Governance Guidelines.

**PROPOSED RATIONALE**

Adopting the Revised Conflicts of Interest Policy, Code of Conduct and Expected Standards of Behavior, as well as the new Corporate Governance Guidelines is another step in ICANN’s enhancements to its conflicts of interest and ethics practices. As announced in October 2011, ICANN is undertaking a three-part review of these practices, and the continued enhancements of the documented policies and practices is just one way to demonstrate ICANN’s commitment to ensuring the legitimacy and

sustainability of the ICANN multi-stakeholder model. The adoption of these documents does not represent an end to the conflicts and ethics review work; it is expected that each of these documents are to be seen as evolving, and subject to change pending the needs of the ICANN community. In addition, the continued work to review the conflicts and ethics practices may necessitate further revision, or the adoption of additional documents as necessary.

With the adoption of these documents, ICANN recognizes that demonstrating adherence to these guidelines, policies and codes is an essential part of a commitment to enhance the organization's conflicts and ethics practices. Having strong documents are only a single part of the equation; it is now up to the Board and the ICANN community as a whole to meet the heightened practices set out therein in order to start putting the enhancements into action.

In response to the public comment received on these documents, ICANN has already incorporated a specific change to reflect individual Board member obligations to be free of conflicts that may impair ICANN's ability to operate for the benefit of the Internet community as a whole. Other comments, such as a request for documentation to be in less legalistic language, are under consideration.

Taking this action is expected to positively impact the ICANN community through the adoption of heightened practices to address and mitigate the potential for conflicts of interest in ICANN decision-making. While these changes are to be viewed as steps in the process of an ongoing review of conflicts and ethics practices, it is important to adopt incremental changes as feasible. The adoption of these guidelines and policy revisions is not expected to have a fiscal impact on ICANN, nor is this expected to have any impact on the security, stability and resiliency of the domain name system.

Submitted by:	Amy Stathos
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