



23 March 2018

RE: ICANN FY16 Form 990

John Poole
Domain name registrant and Editor
DomainMondo.com

Dear John Poole,

This is in response to your follow up regarding the questions you had raised in relation to the disclosure of compensation information in ICANN's form 990. ICANN previously answered your questions relative to the compensation disclosures. These answers can be found at the following links: <https://www.icann.org/en/system/files/correspondence/calvez-to-poole-09oct17-en.pdf> and <https://www.icann.org/en/system/files/correspondence/calvez-to-poole-13jul17-en.pdf>. Please see below for comments to the follow up communication you sent on 13 October 2017.

Please note that this response to your communication sent on 13 October 2017, is provided later than intended and later than I indicated I would attempt to respond. For this, I apologize.

ICANN has consistently carefully analyzed the rules and requirements supporting every question and disclosure in the form 990 in order to produce responses and information that fully complies with such rules and requirements. ICANN also consistently uses expert advice to produce its form 990.

However, before responding to your inquiry, we have re-analyzed our answers and re-validated them with our expert advisor.

Following this verification, please see below ICANN's responses, which are inserted after repeating each of the assertions you have offered.

Assertion/request #1 – Extracted from your communication sent on 13 October 2017:

Beginning of extract:

“Assuming arguendo, that what you have revealed and asserted (for the first time), in your [correspondence of 09 October 2017](#), is true and correct, ICANN should have answered “Yes” to Form 990 Part IV 28(a), 28(b), and/or 28(c), instead of “No” as indicated in the screen shot below from ICANN's actual Form 990 as filed with the IRS:

[Screenshots in original not duplicated here, but can be found in original correspondence at <https://www.icann.org/en/system/files/correspondence/poole-to-calvez-13oct17-en.pdf>]

And therefore ICANN should have completed and attached Schedule L (Part IV) to the Form 990 (screenshot below):

[Screenshots in original not duplicated here, but can be found in original correspondence at <https://www.icann.org/en/system/files/correspondence/poole-to-calvez-13oct17-en.pdf>]

End of extract

ICANN's response to Assertion/request #1

To answer "Yes" to questions 28 a/b/c, ICANN would need to have engaged with Sally Costerton Advisory Limited in a "business transaction" as defined by the form 990, AND, Sally Costerton Advisory Limited would need to be an "interested person" as defined by the form 990. As Sally Costerton Advisory Limited is not an "interested person" ICANN was required to answer "No", and not "Yes" to these questions.

Below please find a discussion and analysis of each element of the question, starting with (i) whether the services provided by an employee of Sally Costerton Advisory Limited constitute a "business transaction" as defined by the IRS, followed by the analysis of (ii) whether Sally Costerton Advisory Limited is or not an "interested person" as per the definition of the IRS for the purpose of the question 28 in Part IV.

(i) "business transaction"

The definition of "business transaction" is described in the instructions to the form 990 and further described in the instructions to schedule L as follows (page 4):

"Business transactions. Business transactions include but aren't limited to joint ventures and contracts of sale, lease, license, insurance, and performance of services, whether initiated during the organization's tax year or ongoing from a prior year.

- a. all payments during the tax year between the organization and the interested person exceeded \$100,000 (except for compensation reported in Part VII, Section A)
- b. all payments during the tax year from a single transaction between such parties exceeded the greater of \$10,000 or 1% of the filing organization's total revenue for the tax year compensation payments during the tax year by the organization to a family member of a current or former officer, director, trustee, or key employee of the organization listed in Form 990, Part VII, Section A, exceeded \$10,000

- d) in the case of a joint venture with an interested person, the organization has invested \$10,000 or more in the joint venture, whether or not during the tax year, and the profits or capital interest of the organization and of the interested person each exceeds 10% at some time during the tax year.

Certain management company transactions with former officers, etc. A business transaction also includes a transaction between the organization and a management company of which a former officer, director, trustee, or key employee of the organization (within the last five tax years, even if not listed in Form 990, Part VII, Section A, because the individual did not receive any compensation from the organization) is a direct or indirect 35% owner (as measured by stock ownership (voting power or value, whichever is greater) of a corporation, profits or capital interest (whichever is greater) in a partnership or limited liability company, or beneficial interest in a trust), or an officer, director, or trustee.”

The services rendered by Sally Costerton Advisory Limited do qualify as a “business transaction” as defined above.

Below is the analysis of whether Sally Costerton Advisory Limited is or not an “interested person” as per the definition provided by the IRS.

(ii) “interested persons”

The instructions call “interested persons” anyone matching the descriptions used in the three sub-questions above. See below an extract from the instructions to schedule L on this topic (page 1):

“1. For Form 990 filers, a person required to be listed in Form 990, Part VII, Section A as a current or former officer, director, trustee, or key employee, and for Form 990-EZ filers, a current officer, director, trustee, or key employee required to be listed on Form 990-EZ, Part IV. For purposes of reporting management company transactions in Part IV, however, a former officer, director, trustee, or key employee of the organization within the last five tax years is treated as an interested person whether or not required to be so listed.

2. The creator or founder of the organization, including the sponsoring organizations of a Voluntary Employees' Beneficiary Association (VEBA).

3. A substantial contributor. For purposes of Schedule L, Parts II–IV, a substantial contributor is an individual or organization that made contributions during the tax year in the aggregate of at least \$5,000 and is required to be reported by name in Schedule B (Form 990, 990-EZ, or 990-PF), Schedule of Contributors, for the organization’s tax year. A substantial contributor may include an employer that contributes to a VEBA.

4. For purposes of Part III, a member of the organization’s grant selection committee.

5. A family member of any individual described above.

6. A 35% controlled entity of one or more individuals and/or organizations described above.

7. For purposes of Part III, an employee (or child of an employee) of a substantial contributor or of a 35% controlled entity of such person, but only if the employee (or child of an employee) received the grant or assistance by the direction or advice of the substantial contributor or designee or of the 35% controlled entity, or under a program funded by the substantial contributor that was intended primarily to benefit such employees (or their children).”

ICANN’s relationship with Sally Costerton Advisory Limited is not described in any of the seven cases offered by the IRS to define an “interested person”, and is therefore not considered an “interested person”. Please recall that, in our letters to you in 2017, ICANN has already explained that Sally Costerton is not considered by the IRS for the purpose of the form 990, a “key employee”, because services received by ICANN are contracted for with Sally Costerton Advisory Limited.

Accordingly, and in sum, even though the services provided to ICANN by Sally Costerton Advisory Limited can be considered a “business transaction”, ICANN appropriately checked “No” as an answer to question 28, part IV, because Sally Costerton Advisory Limited is not an “interested person”. Therefore, ICANN appropriately did not complete Schedule L.

Assertion/request #2 – Extracted from your communication sent on 13 October 2017:

“I previously inquired, but you did not answer, whether there are other officers with arrangements similar to Mr. Crocker, or Ms. Costerton. Please advise. If there are none, then I look forward to your reply and response to the above concerning Sally Costerton and “Sally Costerton Advisory Limited.”

ICANN has responded to this question. Please see below the question that we understand you are referring to above when you state “I previously inquired...”. This question and ICANN’s response appear in the 9 October 2017 response to you, and are copied below for ease of reference (see indented paragraphs below).

As you can see below, ICANN’s response does address your question, and as indicated in that response, further disclosure was provided in the version of the Director Expense Report that was published on 28 October 2017 (see link: <https://www.icann.org/en/system/files/files/fy17-annual-report-expense-reimbursement-payments-directors-28oct17-en.pdf>). In this document, ICANN reports any compensation paid to a director and to his/her company where relevant, and has added a footnote indicating as such. This discloses all payments made to a director, whether directly or indirectly to a company, and thus provides the fullest transparency on such transactions, eliminating the risk that payments are partially disclosed and reported.

"Request #1 from John Poole in letter dated 18 July 2017

(<https://www.icann.org/en/system/files/correspondence/poole-to-calvez-17jul17-en.pdf>):

"I also ask whether **any ICANN officer or director** is or has been doing business with ICANN via their personal "corporation" or other entity, device, or scheme, for the period of the Form 990 (FY16) and for the period from 2008 to present similar to Mr. Crocker, or otherwise, and again the explanations and rationales for "hiding" and not disclosing that information to the IRS and the global multistakeholder community, in accordance with your obligations under the Internal Revenue Code, laws of the United States of America and State of California, and ICANN bylaws and articles of incorporation."

ICANN's response to Request #1:

"There are other ICANN Board members who receive their compensation for their service as a Board member through an entity. Note that Board members who receive compensation for their service during the relevant calendar year for a given form 990 through a domestic company with limited liability, are not reported, as they should not be, in Part VII of the form 990.

The Director Expense Report mentioned above, however, provides the compensation payments issued to or on behalf of Board members irrespective of whether payments are made to individuals or their entities. Accordingly, some of the information you seek is already, publicly available even though properly not reported in the form 990. And, in light of your questions, we will look to add some additional notes to this document, both current and each year thereafter, to clarify whether payments for Board service are made to the Board members individually or to their entities."

Additionally, the compensation of all ICANN Officers is reported on the Form 990 (Part VII), and on ICANN's public website (Remuneration practices, updated annually).

As a closing note, your questions and assertions on the topic of compensation to persons in a leading role suggest that ICANN should review and consider improvements to ICANN's disclosure on this topic. As a result, we are evaluating various options that might allow ICANN to expand the disclosures relative to compensation and payments, with the objective of completeness and clarity, which might further help improve transparency.

Thank You



Xavier J. Calvez
Chief Financial Officer
Internet Corporation for Assigned Names and Numbers (ICANN)