

Proposed Revisions to the Conflicts of Interest Policy

Conflicts of Interest Policy Effective 30 July 2009

ARTICLE I -- PURPOSE AND ADMINISTRATION

Section 1.1 The purpose of the Conflicts of Interest Policy (the "COI Policy") is to ensure that the deliberations and decisions of ICANN are made in the interests of the global Internet community as a whole and to protect the interests of ICANN when ICANN is contemplating entering into a transaction, contract, or arrangement that might benefit the private interest of a Covered Person.

Section 1.2 A Covered Person (see Section VII below for definitions of all defined terms that can be identified throughout this Policy with initial capital letters) may not use his or her position with respect to ICANN, or confidential corporate information obtained by him or her relating to ICANN, in order to achieve a financial benefit for himself or herself or for a third person, including another nonprofit or charitable organization.

Section 1.3 This COI Policy is intended to supplement but not to replace any applicable laws governing conflicts of interest in nonprofit and charitable corporations.

Section 1.4 ICANN will encourage ICANN Supporting Organization and Advisory Committees and other ICANN bodies, as appropriate, to consider implementing the principles and practices of this COI Policy as relevant.

Section 1.5 The Board Governance Committee shall administer and monitor compliance with the COI Policy.

Section 1.6 Certain Capitalized Terms used in this COI Policy shall have the meanings set forth in Article VII of this COI Policy.

ARTICLE II -- PROCEDURES REGARDING CONFLICTS OF INTEREST

Section 2.1 Duty to Disclose.

(a) In connection with any proposed transaction, contract, or arrangement being considered by ICANN, a Covered Person shall promptly disclose to the Board Governance Committee the existence of any Potential Conflicts that may give rise to a Conflict of Interest with respect to the proposed transaction, contract, or arrangement.

(b) The disclosure to the Board Governance Committee of a Potential Conflict shall be made pursuant to such procedures as the Board Governance Committee may establish from time to time. The Covered Person making such disclosure is referred to herein as an Interested Person.

Section 2.2 Determining Whether a Conflict of Interest Exists.

(a) After disclosure of a Potential Conflict by an Interested Person, the Board Governance Committee shall have a discussion with the Interested Person regarding the material facts with respect to the Potential Conflict.

(b) Thereafter, in the absence of the Interested Person, Disinterested members of the Board Governance Committee shall determine whether or not the circumstances disclosed by the Interested Person regarding the Potential Conflict constitute a Conflict of Interest, and, subject to a contrary finding by the Disinterested Board members, the determination by the Disinterested members in this regard is conclusive and may not be challenged by the Interested Person. If the Interested Person is a Director, such determination shall be reported to the Disinterested Board members at the next Board meeting and shall be subject to Board ratification.

Section 2.3 Procedures for Addressing a Conflict of Interest.

(a) If the Board Governance Committee determines that a Conflict of Interest exists, the Conflicted Person may make a presentation to the Board Governance Committee regarding the transaction, contract, or arrangement. After any such presentation, the Conflicted Person shall leave the meeting and shall not be present during any discussion of the Conflict of Interest.

(b) The Chair of the Board Governance Committee shall, if appropriate, appoint a Disinterested person or committee to investigate alternatives to the proposed transaction, contract, or arrangement. If the Conflicted Person is a Board member, the findings shall be reported to the Board.

(c) After exercising due diligence, the Board Governance Committee shall determine whether ICANN can obtain with reasonable efforts a more advantageous transaction, contract, or arrangement in a manner that would not give rise to a Conflict of Interest. If the Conflicted person is a Board member, such determination shall be reported to the Board.

(d) If a more advantageous transaction, contract, or arrangement is not reasonably possible under circumstances not producing a Conflict of Interest, the Board Governance Committee, and where the Conflicted Person is a Board member, the Board, shall determine by a majority vote of the Disinterested members whether the transaction, contract, or arrangement is in ICANN's best interest, for its own benefit, and whether it is fair and reasonable to ICANN. In conformity with those determinations, the Board Governance Committee or the Board, as applicable, shall make its decision as to whether ICANN should enter into the transaction, contract or arrangement.

Section 2.4. Duty to Abstain

(a) No Director may vote on, and must abstain from voting on, on any matter in which the Director has a material Financial Interest that will be affected by the outcome of the vote, except that a Director need not abstain from, and may vote on, whether to accept or to reject a recommendation to the Board by an Independent Valuation Expert contained

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in a Reasoned Written Opinion from such Independent Valuation Expert regarding a compensation arrangement for services provided by the Director to ICANN in the Director's capacity as member of the Board of ICANN.

(b) In the event of such an abstention, the abstaining Director shall state the reason for the abstention, which shall be noted in the notes of the meeting in which the abstention occurred.

(c) Except as otherwise provided in Section 2.4(a), above, regarding a compensation arrangement for services provided by the Director to ICANN in the Director's capacity as member of the Board of ICANN, no Director may participate in Committee or Board deliberations on any matter in which he or she has a material Financial Interest without first disclosing the conflict and until a majority of Disinterested Committee or Board members present agree on whether and in what manner the Board member may participate.

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Section 2.5 **Violations of the Conflicts of Interest Policy.**

(a) If the Board Governance Committee has reasonable cause to believe a Covered Person has failed to disclose an actual or Potential Conflict of Interest, the Board Governance Committee shall inform the Covered Person, and initiate the procedures described in Section 2.2 and 2.3.

ARTICLE III-- RECORDS OF PROCEEDINGS

Section 3.1 The written or electronic records of the Board and the Board Governance Committee relating to Conflicts of Interest shall contain:

- (a) The names of Covered Persons who disclosed or otherwise were found to have a Potential Conflict in connection with a proposed transaction, contract, or arrangement;
- (b) The nature of the Potential Conflict;
- (c) Any action taken to determine whether a Conflict of Interest was present;
- (d) The Board's or Board Governance Committee's, as applicable, decision as to whether a Conflict of Interest in fact existed;
- (e) The names of the persons who were present for discussions and votes relating to the transaction, contract, or arrangement;
- (f) The content of the discussion, including any alternatives to the proposed transaction, contract, or arrangement; and
- (g) A record of any votes taken in connection therewith.

ARTICLE IV -- COMPENSATION

Section 4.1 A Covered Person who receives compensation, directly or indirectly, from ICANN for services may not vote on matters pertaining to the Covered Person's compensation.

Section 4.2 A Covered Person may not vote on matters pertaining to compensation received, directly or indirectly from ICANN by a member of the Covered Person's Family or by an individual with whom a Covered Person has a close personal relationship, including, but not limited to, any relationship other than kinship, spousal or spousal equivalent that establishes a significant personal bond between the Covered Person and such other individual that in the judgment of the Board Governance Committee could impair the Covered Person's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANN.

Section 4.3 No Covered Person who receives compensation, directly or indirectly, from ICANN, either individually or collectively, is prohibited from providing information to the Board or to any Committee regarding the Covered Person's compensation.

ARTICLE V -- ANNUAL STATEMENTS

Section 5.1 Each Covered Person shall annually sign a statement which affirms such Covered Person: (i) has received a copy of the COI Policy; (ii) has read and understands the COI Policy; (iii) has agreed to comply with the COI Policy; and (iv) understands ICANN is a tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code and that in order to maintain its federal tax exemption, ICANN must engage primarily in activities which accomplish one or more of ICANN's tax-exempt purposes.

ARTICLE VI -- PERIODIC REVIEWS

Section 6.1 To ensure ICANN operates in a manner consistent with its tax-exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, ICANN's Office of the General Counsel and Finance Department shall conduct periodic reviews of its purposes and activities.

Section 6.2 These periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether activities carried on by ICANN are consistent with and in furtherance of one or more of ICANN's tax-exempt purposes;
- (b) Whether ICANN follows policies and procedures reasonably calculated to prevent private inurement more than incidental private benefit, excess benefit transactions, substantial lobbying, and participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office; and
- (c) Whether compensation arrangements and benefits are reasonable, are based on appropriate data as to comparability, and are the result of arm's length bargaining.
- (d) Whether partnerships, joint ventures, and arrangements with organizations that

provide management personnel or management services conform to ICANN's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further tax-exempt purposes, and do not result in private Inurement more than incidental private benefit, or in an excess benefit transaction.

Section 6.3 When conducting the periodic reviews, ICANN may, but need not, use outside experts and/or advisors. If outside experts and/or advisors are used, their use shall not relieve the Board of ICANN of its responsibility for ensuring periodic reviews are conducted in the manner prescribed in this Article.

ARTICLE VII -- DEFINITIONS

Section 7.1 As used in this COI Policy, the following terms shall have the meanings set forth below.

- (a) "Board Liaison" shall mean those liaisons to the ICANN Board of Directors appointed in accordance with ICANN's Bylaws.
- (b) "Compensation" includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.
- (c) "COI Policy" means this Conflict of Interest Policy as adopted by the Board of ICANN on 30 July 2009.
- (d) A "Conflict of Interest" arises when the Board or Board Governance Committee, as applicable, following the procedures set forth in Articles II and III of this COI Policy, determines that a Covered Person has disclosed a Potential Conflict that may in the judgment of a majority of the Disinterested members of the Board or Board Governance Committee, as applicable, adversely impact the Covered Person's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of ICANN.
- (e) "Conflicted Person" means a Person that has been determined by the Board Governance Committee to have a Conflict of Interest.
- (f) "Covered Person" shall mean an Officer, Director, Board Liaison, or Key Employee of ICANN.
- (g) A "Director" is any voting member of the Board of ICANN.
- (h) "Disinterested" means not having a Potential Conflict with respect to a transaction, contract, or arrangement being considered by ICANN.
- (i) "Domestic Partner" shall mean an individual who resides at the same residence as the Covered Person as his or her spousal equivalent.
- (j) A "Duality of Interest" arises when with respect to a transaction, contract, or

arrangement, a Covered Person or a member of a Covered Person’s Family has a fiduciary relationship with another party to a proposed transaction, contract, or arrangement which gives rise to a circumstance in which the fiduciary duties of the Covered Person to ICANN and the fiduciary duties of the Covered Person, or the fiduciary duties of the Family Member of the Covered Person, to the other party may be in conflict. A Duality of Interest does not constitute a Conflict of Interest if ICANN and all other parties to the transaction, contract, or arrangement, being in possession of all material facts, waive the conflict in writing.

(k) The “Family” of any Covered Person shall include the Covered Person’s spouse; Domestic Partner; siblings and their spouses or Domestic Partners; ancestors and their spouses or Domestic Partners; and descendants and their spouses or Domestic Partners.

(l) A “Financial Interest” exists whenever a Covered Person has, directly or indirectly, through business, investment, or Family: (i) an ownership or investment interest in any entity with which ICANN has a transaction, contract, or other arrangement; (ii) a compensation arrangement with any entity or individual with which ICANN has a transaction, contract, or other arrangement; and (iii) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which ICANN is negotiating a transaction, contract, or other arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. Transactions, contracts, and arrangements include grants or other donations as well as business arrangements. A Financial Interest is a Potential Conflict but is not necessarily a Conflict of Interest. A Financial Interest does not become a Conflict of Interest until the Board Governance Committee, following the procedures set forth in Articles II and III of this COI Policy, determines that the Financial Interest constitutes a Conflict of Interest.

(m) An “Independent Valuation Expert” means a Person retained by ICANN to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for Persons other than ICANN; (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (iv) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.

(n) An “Interested Person” is a Covered Person who has a Potential Conflict of Interest with respect to a particular transaction, contract, or arrangement under consideration by the Board or Board Governance Committee, as applicable.

(q) “Internal Revenue Code” shall mean the United States Internal Revenue Code of 1986, as amended, or any future revenue statute replacing the 1986 Code.

(p) “Inurement,” as used in this COI Policy, shall mean: (i) a transaction in which ICANN provides an economic benefit, directly or indirectly, to or for the use of any

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Covered Person where the value of that economic benefit exceeds the value of the consideration (including the performance of services) that ICANN receives in exchange; or (ii) any transaction or arrangement by or through which a Covered Person receives a direct or indirect distribution of ICANN's net earnings (other than payment of fair market value for property or the right to use property and reasonable compensation for services).

(q) A "Key Employee" is an employee of ICANN designated as a member of the Executive Management team of ICANN, but who is not an Officer or Director.

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(r) An "Officer" is an individual holding a position designated as an Officer by ICANN's Bylaws or by resolution of the Board and includes, without limitation, the President of ICANN.

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(s) A "Person" includes an individual, corporation, limited liability company, partnership, trust, unincorporated association, or other entity.

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(t) A "Potential Conflict" means any one or more of the following: (i) a direct or indirect Financial Interest in a transaction, contract or arrangement being considered by ICANN by a Covered Person or a member of a Covered Person's Family; (ii) a Duality of Interest by a Covered Person or a member of a Covered Person's Family with respect to another party to a transaction, contract, or arrangement being considered by ICANN that has not been waived in writing by all parties to the transaction, contract, or arrangement; or (iii) a close personal relationship between the Covered Person, or a member of a Covered Person's Family, with an individual who is, directly or indirectly through business, investment, or Family, a party to a transaction, contract, or arrangement being considered by ICANN.

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(u) "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of Section 7.1(m) (i) through (iv) of this Policy. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

Section 7.2 Where terms used in this COI Policy, such as Reasonable Compensation (which shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations), have a particular meaning under the Internal Revenue Code and/or any Regulations issued thereunder, this COI Policy shall be construed to incorporate that meaning as the context requires.

Section 7.3 All other terms used in this COI Policy shall be given their ordinary, everyday meaning.