

Staff Report of Public Comment Proceeding

PTI Governance Documents			
Publication Date:	12 August 2016		
Prepared By:	ICANN Staff		
Public Comment Proceeding		Important Information Links	
Open Date:	08 July 2016		
Close Date:	07 August 2016		
Staff Report Due Date:	12 August 2016		
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Section I: General Overview and Next Steps			
<p>Now that the IANA Stewardship Transition Coordination Group (ICG) and Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) proposals have been transmitted to the National Telecommunications and Information Agency (NTIA), one of the key implementation planning items is to incorporate an affiliate, referred to as PTI, for the performance of the naming-related IANA functions. ICANN also intends to subcontract the performance of the numbering- and protocol parameter-related IANA functions to PTI.</p> <p>ICANN will need to ensure strong, well-governed PTI upon incorporation. The PTI Conflict of Interest Policy, PTI Board Code of Conduct were developed to strengthen the governance practices of PTI, as well as a draft PTI Expected Standard of Behavior, developed to guide PTI's Board, staff, customers and broader community on expected standards to guide their participation.</p> <p>Each of these documents is modeled off of the versions already in force in ICANN. The ICANN Conflict of Interest Policy and Board Code of Conduct that these documents were modeled off of were developed with external corporate governance expertise, and were most recently subject to public comment in 2012 before ICANN Board approval. The ICANN Expected Standards of Behavior were developed with community input over eight years ago, and have been refined in 2012 with corporate governance expertise, and just recently to incorporate best practices on language prohibiting harassment. These changes were also subject to public comment prior to ICANN adoption.</p> <p>Next Steps:</p> <p>Once the PTI Board has been elected, it will be asked to approve the proposed versions of these PTI Governance Documents as revised to address public comment.</p>			
Section II: Contributors			

At the time this report was prepared, a total of two (2) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions	Lise Fuhr	CWG-Stewardship
Business Constituency	Steve DelBianco	BC

Individuals:

Name	Affiliation (if provided)	Initials

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above ([View Comments Submitted](#)).

The CWG-Stewardship noted the import of the PTI Governance documents and requested a final review of the documents following the public comment period. The CWG-Stewardship provided inputs on all three of the documents posted for comment, and also provided proposed markups for each document.

Conflicts of Interest Policy

The CWG-Stewardship requested that:

1. The Chair of the PTI Board also received any disclosures required under the policy, in addition to the Secretary;
2. A modification to the required approvals threshold to reflect the PTI Bylaws;
3. Removal of the concept of Director Compensation for service as a Director, as it is prohibited in the PTI Bylaws;
4. Additional language to address the situation where there are Common Directors between ICANN and PTI and harmonize it with when there is a Duality of Interests (i.e., when a person covered under the conflicts policy holds a fiduciary relationship to both PTI and another entity with which there is a contemplated relationship or transaction.) This change was requested to reflect a specific legal situation under California law.

PTI Board Code of Conduct

The CWG-Stewardship requested that the language in the section on "Loyalty" be modified to align with the PTI Articles, which were revised while the PTI Governance Documents were posted for comment.

PTI Expected Standards of Behavior

The CWG-Stewardship requested that the fifth bullet point of the document be updated to reflect PTI's purpose as revised within the PTI Articles of Incorporation.

The BC noted the extent to which the PTI Governance Documents comport with ICANN's governance documents (on which the BC previously provided comments), and that these documents meet the views expressed by NTIA in its June 9 Proposal Assessment Report that importing ICANN's practices to PTI would benefit the new organization.

Conflicts of Interest Policy

The BC requested that language that exists within ICANN's Conflicts of Interest policy on the use of an independent valuation expert as necessary be imported into the PTI Conflicts of Interest Policy.

Expected Standards of Behavior

The BC noted its comments submitted to ICANN on the updates to the ICANN Expected Standards of Behavior document. As stated there, the BC reiterated that it is important to provide meaningful guidelines and procedures for the use of a harassment policy within the Expected Standards of Behavior. The BC requested these to be aligned with ICANN's process for the same, and requested a timeline and project details for the development of this work.

Section IV: Analysis of Comments

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

Conflicts of Interest Policy

ICANN is in full agreement with the CWG-Stewardship on their first three areas of comment, and has incorporated the changes in full as recommended by the CWG-Stewardship. On the issue of Common Directors/Duality of Interest, the CWG-Stewardship identified a key area for clarification within the Policy, and ICANN agrees that it needs to be addressed. However, the focus on Common Directors (having a director on both the ICANN and PTI Board at the same time) appears to be an impossibility given the manner of selection of the PTI Board. The PTI Board is expected to be comprised of three employees of ICANN or PTI (which, by definition, precludes ICANN Directors), and then two persons selected through the Nominating Committee process, from which ICANN Directors are specifically precludes ICANN directors from eligibility.

As a result, the additional complexity added at the proposed new section 2.3 on Common Directors is unnecessary, as there is no need to develop a separate process for situations where directors are common as between ICANN and PTI. ICANN has provided an alternative modification that further supports the idea that a Duality of Interest would never be treated differently if the a person covered by the PTI Conflicts of Interest Policy also somehow happens to be an ICANN Director.

This more streamlined language is more appropriate in light of how the PTI Board can be comprised. ICANN confirmed the revisions with the external counsel to the CWG-Stewardship prior to completion of the document.

The BC's request for the independent valuation expert language from ICANN's Conflicts of Interest Policy to be included in the PTI Conflicts of Interest policy cannot be taken on at this time. The independent valuation expert language was added to ICANN's Conflicts of Interest Policy in 2011 specifically to allow the ICANN Board to consider the issue of Board Compensation (in response to a recommendation from ATRT1), as the ICANN Board was previously precluded from considering Board compensation matters. Here, the PTI Board –

much like the ICANN Board was in the past – is precluded from considering Board compensation matters. In the future event that allowing for compensation to the PTI Board is something that the community determines is appropriate, the PTI Conflicts of Interest Policy can be revised (after public comment) to specify the requirements for how the PTI Board can make those considerations. See <https://www.icann.org/resources/pages/bylaws-amend-vi-coi-policy-2011-09-01-en> for more information on the 2011 changes to the ICANN Conflicts of Interest Policy.

Board Code of Conduct

ICANN is in full agreement with the CWG-Stewardship on their comments, and has incorporated the changes in full as recommended by the CWG-Stewardship.

Expected Standards of Behavior

ICANN is in full agreement with the CWG-Stewardship on their comments, and has incorporated the changes in full as recommended by the CWG-Stewardship.

In response to the BC's note, and as noted in the summary report for the ICANN Expected Standards of Behavior comment forum published on 11 July 2016, there is other ongoing work with ICANN to address this important concern. Specifically, at the direction of the ICANN Board, ICANN staff is in the process of "retaining and expert with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN Public Meetings, which could include terms such as complaints handling and resolution and enforcement processes." There will be further updates to the community on the progress of this work. The PTI Board will have the opportunity to consider how the polic(ies) developed for the community in the ICANN context are appropriately brought into PTI. No changes are required as a result of this comment.