

# ICANN's Conflicts of Interest, Ethics and Confidentiality Practices

27 October 2011



# Agenda

- 1. Introduction*
- 2. What ICANN has in place today*
- 3. The work ICANN is undertaking*
- 4. Timeline to Completion*
- 5. Questions*

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S É N É G A L  
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# Introduction



# What are we discussing?

- Current state of and potential enhancements to *ICANN's Conflicts of Interest Policy*
- *ICANN's Code of Conduct*, including considerations of confidentiality, ethics and adherence to code of conduct

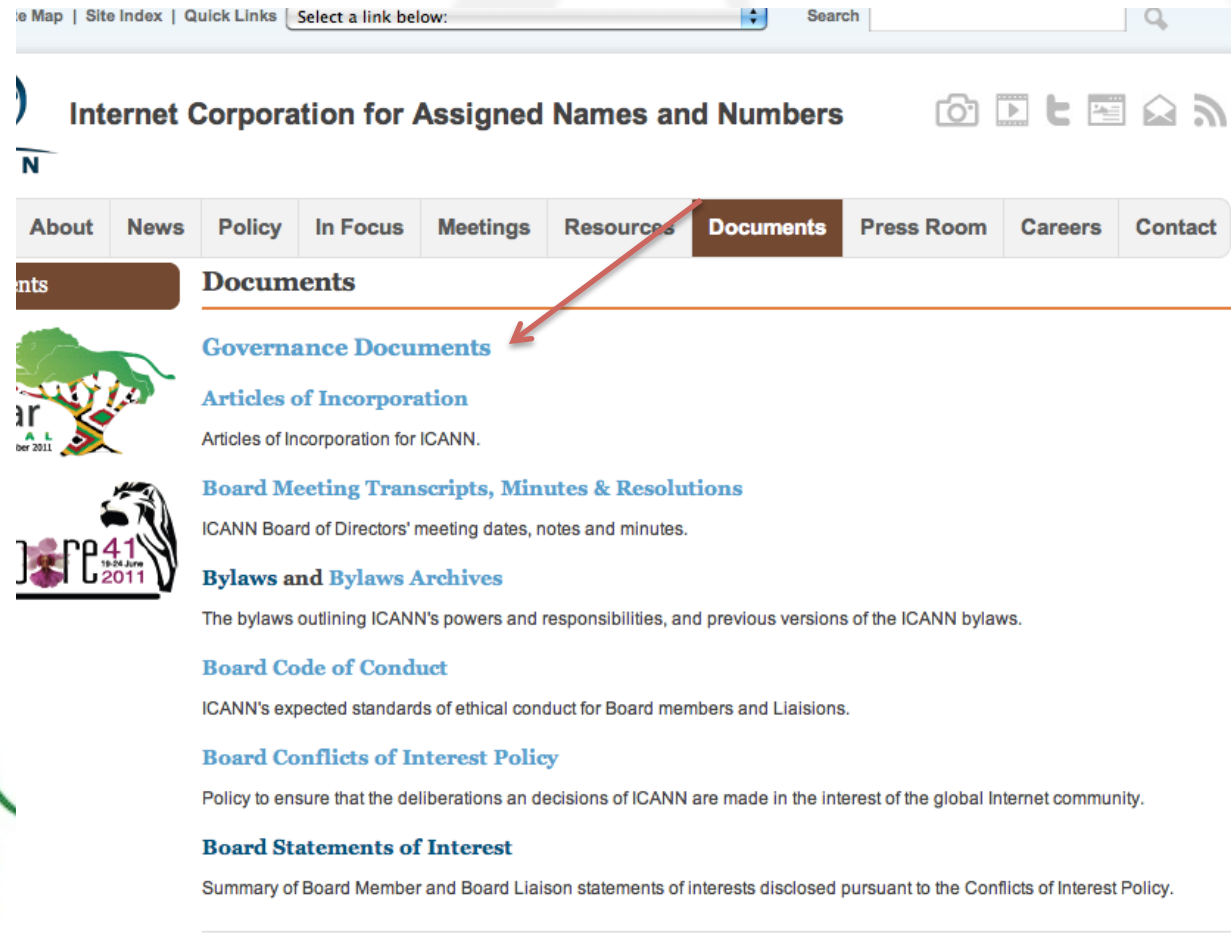


# ICANN's Current Conflicts of Interest Policy, Ethics and Confidentiality Practices



# Improved Accessibility to Existing Documents

Accessible from  
“Documents”  
and  
“Governance  
Documents”  
Quick Links



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Internet Corporation for Assigned Names and Numbers

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**Documents**

- Governance Documents** (highlighted with a red arrow)
- Articles of Incorporation**  
Articles of Incorporation for ICANN.
- Board Meeting Transcripts, Minutes & Resolutions**  
ICANN Board of Directors' meeting dates, notes and minutes.
- Bylaws and Bylaws Archives**  
The bylaws outlining ICANN's powers and responsibilities, and previous versions of the ICANN bylaws.
- Board Code of Conduct**  
ICANN's expected standards of ethical conduct for Board members and Liaisons.
- Board Conflicts of Interest Policy**  
Policy to ensure that the deliberations and decisions of ICANN are made in the interest of the global Internet community.
- Board Statements of Interest**  
Summary of Board Member and Board Liaison statements of interests disclosed pursuant to the Conflicts of Interest Policy.



# Conflicts of Interest Requirements

What are ICANN's current rules and Policy on Conflicts of Interest?

- Bylaws
- Conflicts of Interest Policy



# Conflicts of Interest Bylaws

- Bylaws, Article VI, Section 6:
  - No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.





# Conflicts of Interest Policy

## Imposes

- Duty to Disclose
- Determining if a conflict exists
- Addressing the Conflict
- Duty to Abstain
- Enforcement tools for violations



# Conflicts of Interest Policy – Duty to Abstain

**No Director shall vote** on any matter in which he or she has a **material Financial Interest** that will be affected by the outcome of the vote.



# Conflicts of Interest Policy – Duty to Abstain

**No Director shall 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.



# Conflicts of Interest Policy – Duty to Abstain

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.



# Conflicts of Interest Policy – Financial Interest

A “Financial Interest” exists whenever a Covered Person has, **directly or indirectly, through business, investment, or Family** has:

- an actual or potential **ownership or investment interest** in

Or

- an actual or potential **compensation arrangement** with

any entity or individual with which ICANN has or is negotiating a transaction, contract, or other arrangement



# Conflicts of Interest Policy – Financial Interest

- **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.**



# Conflicts of Interest Policy – Potential Conflict

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**



# Conflicts of Interest Policy – Potential Conflict

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





# Conflicts of Interest Policy – Potential Conflict

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.



# Conflicts of Interest Policy – Statements of Interest

- Board Members and Liaisons complete Statements of Interest annually.
- Reviewed by BGC to determine potential conflicts
- ICANN began posting summaries of Director Statements of Interest in March 2011 (<http://www.icann.org/en/board/summary-board-soi-en.htm>)



# Code of Conduct - Ethics

- Board members are “expected to adhere to a high standard of ethical conduct and to act in accordance with ICANN’s Mission and Core Values.”
- “Unethical actions, or the appearance of unethical actions, are not acceptable.”



# Code of Conduct - Ethics

- Sets out expectations of Board Members' duties of **loyalty, care, inquiry, prudent investment, compliance with laws** promotion of **Integrity of Records and Public Reporting**, and **adherence to ethical standards**
- Sets out expectations of addressing Conflicts of Interest and avoiding using information learned within ICANN for personal gain



# Code of Conduct - Ethics

- Establishes specific expectations for interaction with the community and the media
- Includes an **enforcement** mechanism for violations of the code
- Requires annual written confirmation of receipt and adherence



# Code of Conduct - Confidentiality

- “Board members should maintain the confidentiality of information entrusted to them by ICANN and any other confidential information about ICANN, its business, customers or suppliers, which comes to them, from whatever source, except when disclosure is authorized or legally mandated.”
- “For purposes of this Code, ‘confidential information’ includes all non-public information relating to ICANN, its business, customers or suppliers.”



# Code of Conduct - Confidentiality Guidelines

- Code of Conduct is enhanced through **Guidelines**, requiring Board training on the code
- The Guidelines provide guidance on handling confidential information, as well as guidance for addressing improper release of information
- The Guidelines were last revised in April 2011



# Ongoing Enhancements - The Work Underway





# Challenge to Form Gold Standard

ICANN is now working to:

- Enhance its COI Policy to address hard cases and challenged *perceptions* of conflicts
- Enhance and improve Code of Conduct
- Create gold standard of ethical practices



# Challenge to Form Gold Standard

- The Board is having intensive conversations to assist Directors in identifying potential conflicts
- BGC is overseeing a series of three reviews to address the needs of the community



# Challenge to Form Gold Standard

1

Our corporate law firm is reviewing our current working documents, including our “Conflicts of Interest Policies”, “Code of Conduct” and “Employee Handbooks,” to enhance the focus on best practices for conflicts and ethics.



# Challenge to Form Gold Standard

2

A new independent law firm (not involved in ICANN processes) is reviewing ICANN's documentation, comparing ICANN to similarly situated non-profits and making recommendations for enhancements.



# Challenge to Form Gold Standard

## 2

- The independent firm's recommendations have already resulted in making the governance documents easier to find.
- More challenging recommendations are to come.



# Challenge to Form Gold Standard

## 3

- Contracting with an international expert group to review ICANN's documents and practices and to make recommendations.
- Will focus on ICANN's global function and the best practices of other international organizations.



# Challenge to Form Gold Standard

3

- The expert group will also identify possible new best practice measures at the community level.



# Challenge to Form Gold Standard

- CEO is setting clear expectations for staff communications with potential new gTLD applicants, including restrictions on interactions and reporting requirements
  - Instituting culture of awareness of conflicts and ethical issues for all in community





# Timeline to Completion



# Goal - Board Adoption in Costa Rica

- Research and analysis, and initial review by BGC - fourth quarter 2011
- Public Comment postings by January 2012
- Summaries provided to BGC for consideration and discussion, and any required revisions in February
  - Board approval in March



# Thank You



# Questions?

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