



Final Report by International Expert Group

Prague, 23 June 2012



Board Codes and Guidance

- Currently there exist a **large number of detailed codes and guidelines**:
 - Bylaws
 - Board Conflicts of Interest Policy
 - Code of Conduct for the Board
 - Corporate Governance Guidelines
 - Confidentiality Guidelines
 - Code of Ethics, mainly directed at employees of ICANN

- These codes have been **subjected to extensive review** by outside lawyers and are comprehensive although repetitive and not easy for directors to use as guidelines.

Our conclusion

The Codes in regard to employees, directors' conflicts of interest and directors' conduct, taken together with the bylaws, are more than sufficient for their purpose.



Evaluation by International Expert Group

- Given the extent of these documents we do not believe that
 - a **gap analysis**, or
 - a **benchmarking exercise**against international best practice provides additional value.

- What is **missing is a qualitative approach** to key governance issues rather than the quantitative detailed approach contained in the documentation.

- ***We propose a clear definition of ICANN's purpose, its value drivers and strategic stakeholders and to develop a Board Charter for approval by the Board.***



ICANN's Key Stakeholders

- Are the **key stakeholders** including the public at large **defined** so that ICANN can address the appropriate balance of interests between the diverse internet community and those of the wider internet-using public?
- Does the composition of the Board and the work of the above Board Committees adequately reflect **the legitimate needs, interests and expectations of ICANN's strategic stakeholders**?
- Does ICANN have an **outreach program** to strategic stakeholders to understand their legitimate needs, interests and expectations?
- Is there regular reporting to the Board on stakeholder issues?

The International Expert Group regards a clear understanding of the answers to these questions as essential to establish trust and confidence between the Board, management and strategic external stakeholders.



Post Board mandate conflict avoidance

- **Avoidance of Conflicts of Interest after Board activity finishes** is currently limited to 12 months in relation to new gTLD decisions on which the director voted.

While there is a trend to further extend the prohibition period, especially for organizations with a public regulatory role, detailed rules are unlikely to solve the many practical conflict situations. In order for ICANN to counter the perception that Board members take decisions with their own future opportunities in mind we propose adherence to the director's duty of loyalty and good faith towards ICANN.



Summary: Key Recommendations

- 1** The role of the Board
- 2** Developing a Board Charter
- 3** Improving Board selection processes
- 4** Establishing a Board training program
- 5** Introducing a graded Board sanctions system
- 6** Post-Board restrictions after voting on an issue



The role of the Board

- Board directors have a legal fiduciary obligation to act in the best interests of the organisation as a whole.
- The bylaws clearly state:
 - Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.
- The bylaws contain a set of core values that the Board must use to guide the decisions of ICANN. The Board shall exercise its judgment to determine which core values are most relevant and how they apply to specific circumstances, and to determine, if necessary, an appropriate and defensible balance among competing values.

Given the process of electing and appointing members to the Board , a perception can exist both within the Board and externally that Directors are representative of particular stakeholder groups or individual business interests.



Developing a Board Charter

- A **Board charter** would assist Board directors in making their decisions consistent with the role of the Board as defined in the bylaws, and in communicating to the community the role of the Board and the values it takes into account when making decisions.
- A **draft Board Charter** has been developed by the Expert Team.
- This draft is a **starting point for discussions** in and with the Board to ensure it represents the outcome of work on the role of the Board and and carries full support from all members of the Board.

Best practice would call for a facilitated process to create consensus and buy-in involving both the Board, senior ICANN management and consultations with stakeholders.



Improving Board selection processes

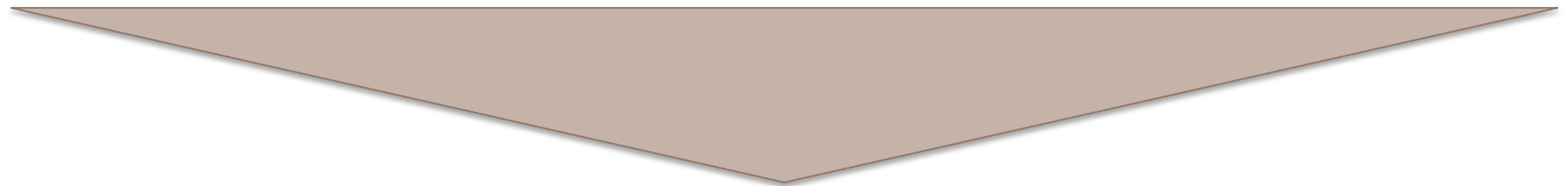
- It is fully recognised that the Board needs both **technically versed members** as well as those experienced in **governance and Board issues**.
- Assuming that the elected members from the Supporting Organisations will largely be experts in the global Internet's systems of unique identifiers, a major role falls on the **NomCom** to select and appoint directors providing geographic and gender diversity as well as those bringing senior Board experience to ICANN.

Previous Board experience of organizations of similar size, scope and purpose has not been a selection criterion for the NomCom and we recommend its inclusion as well as more active outreach to potential candidates also using recruitment firms.



Establishing a Board training programme

- In addition to the facilitated programme focused on the role of the Board and developing consensus around the behaviours captured in the Board Charter, **training sessions** should be held for the Board.



All new Board members should be supported by an induction course.

Annually all Board members should receive training on conflicts of interest and on the confidentiality policies to which they are bound.



Introducing a graded Board sanctions system

- Current **Board sanctions**, for instance, for non-compliance with conflict of interest policies, provide for termination of Board membership.

Introduce a system of graded sanctions, commencing with a formally recorded warning, leading to a written reprimand, and only finally as a result of repeated offences leading to expulsion from the Board.



Post Board restrictions after voting on an issue

- Candidates for the Board should disclose any potential conflicts of interest during the selection process. It is recognized that candidates that are experts in the global Internet's systems of unique identifiers may have potential conflicts at the time they join the Board.
- Once on the Board members disclose actual and potential conflicts of interest and are precluded from voting on relevant issues
- After leaving the Board those members who participated in and voted on key decisions may not benefit from them based on their duty of loyalty to ICANN.

Policies both during and after Board service should be guided by the duty of loyalty and good faith towards ICANN which company directors assume. Given the quasi public service role of ICANN and its directors, the above best practice principles should serve as the guide on restriction of activities related to Board decisions that a Director has voted on after the Board mandate has finished.



Thank You
and invitation to
discussion !



Background

Material



Board selection process and composition

- Currently **six Board members are elected** from the **Address, Country Code Name and Generic Name Supporting Organizations** and **one Board member** by the **At-Large community**.
- **Eight Board members are appointed** by a **nominating committee** comprising 20 members from ICANN's stakeholders including: registries, registrars, business users, internet service providers, intellectual property interests, non-commercial organization users, individual Internet users, country code managers, regional internet registries, and various parts of the technical community. The nominating committee seeks to ensure that in aggregate the Board comprises directors reflecting the functional, geographic, and cultural diversity of the Internet.
- **The President of ICANN** is an *ex officio* voting member.
- **One non-voting liaison** from the **Government Advisory Committee**
- **4 non-voting liaisons from the technical community** appointed by the Security and Stability Advisory Committee, the Root Server System Advisory Committee, the Internet Engineering Task Force, and the Technical Liaison Group. The liaisons participate fully in Board discussions and deliberations and have access to the materials provided to directors.



Board Committees

- In support of Board work there are a **number of Board committees**.
- Those that support Governance functions include:
 - Governance Committee
 - Compensation Committee
 - Finance Committee
 - Risk Committee
 - Audit Committee
 - Executive Committee
- The bylaws provide an **Independent Review** of Board actions that may be initiated



Board Committees

- The Board also has committees that provide review and oversight of critical areas of ICANN's work, these include:
 - IANA Committee
 - New gTLD Program Committee
 - Public Participation Committee
 - Global Relationships Committee
 - Structural improvements Committee

- These committees are constructed to avoid having directors as members that may have conflicts with respect to the subject matter of the committee.



Advisory Committees to the Board

- The Board also receives independent advice from a set of Advisory Committees. The vast majority of members of these committees are not Board members.
 - At-Large Advisory Committee (representing individual Internet users) (ALAC)
 - Governmental Advisory Committee (GAC)
 - Security and Stability Advisory Committee (SSAC)
 - Root Server System Advisory Committee (RSSAC)



ICANN's Key Stakeholders (I)

- ICANN's key stakeholders are identified in various places in the ICANN bylaws, and include:
- Service providers associated with the global Internet's systems of unique identifiers:
 - gTLD registries and registrars
 - ccTLD managers
 - Regional Internet Registries (RIRs)
 - Root name server operators
- User groups:
 - Business users
 - Non-commercial organization users
 - Internet service providers
- Special interest groups:
 - Intellectual property constituency
 - Not-for-profit operational concerns (NPOC)



ICANN's Key Stakeholders (II)

- National Governments

- Internet technical community, including:
 - Internet security and stability experts
 - Internet Engineering Task Force
 - the European Telecommunications Standards Institute (ETSI)
 - the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T),
 - the World Wide Web Consortium (W3C), and
 - the Internet Architecture Board (IAB).



Connection between stakeholders and Board

- ICANN's stakeholders are formed into supporting organisations that provide substantive policy recommendations for Board action:
 - Address Supporting Organization
 - Generic Names Support Organization
 - Country Code Names Supporting Organization
 - These organizations elect two Board Directors each
- ICANN's stakeholders also form Advisory Committees to provide advice to the Board:
 - At-Large Advisory Committee (representing individual Internet users) (ALAC)
 - Governmental Advisory Committee (GAC)
 - Security and Stability Advisory Committee (SSAC)
 - Root Server System Advisory Committee (RSSAC)
 - These organizations also appoint members of the Board (non-voting liaisons from GAC, SSAC, and RSSAC, and a Director from ALAC)
- The stakeholders as a whole form the nominating committee that appoints 8 Board directors by consensus



Outreach programs and reporting

- ICANN holds three public meetings a year, which are rotated around 5 geographic regions
- At each meeting the Board meets with each of the stakeholder groups during the week through various mechanisms
- ICANN provides substantial travel funding for leaders from the stakeholder groups to attend these meetings
- ICANN also has staff in a global relationships team that provide outreach to Internet stakeholders across the geographic regions
- Staff provide the Board will updates of their outreach activities.