

## Council Committee for Overseeing and Implementing Continuous Improvement Review of Statement of Interest (SOI) Requirements

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### Status of This Document

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This is the Recommendations Report of the Council Committee for Overseeing and Implementing Continuous Improvement (CCOICI) following its review of the Recommendations Report submitted by the GNSO Statement of Interest Task Force following their review of the GNSO Statement of Interest (SOI) Requirements as well as its review of the input received in response to the [public comment forum](#). This Recommendations Report will be submitted to the GNSO Council for its consideration.

### Preamble

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The objective of this Recommendations Report is to document the deliberations and recommendations of the CCOICI following its review of the GNSO SOI TF Recommendations Report concerning the GNSO's Statement of Interest requirements as outlined in the TF's [assignment](#) as well as its review of the input received in response to the public comment forum.

*Please note that this document contains redlines to highlight proposed changes to existing documents.*

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# 1. Introduction

The CCOICI [tasked](#) the GNSO Statement of Interest (SOI) Task Force to address the following questions:

1. Is the original objective of the SOI, as stated in the BGC WG Report<sup>1</sup>, still valid? If not, why not and what should the current objective be?
2. Based on the response to question 1), is the requested information to be provided as part of the SOI still fit for purpose? If not, why not, and what would need to be changed to make it fit for purpose?
3. Are there any further measures that should be considered from an enforcement / escalation perspective, in addition or instead of those already included in the requirements?

The TF submitted its [Recommendations Report](#) to the CCOICI on 27 April 2023. In relation to the first assignment question, is the original objective still valid, the TF concluded early on that:

The original objective of the Statement of Interest (SOI), namely allowing for the interests of participants to be declared publicly, remains valid. The TF also confirmed that a traditional conflict of interest policy does not pertain to GNSO policy development activities, similar to how this is described in the GNSO Operating Procedures Section 4.0 for Council members as well as the BCG Report. There are, however, some improvements that the SOI Task Force will consider to address some of the issues that have been identified with the current way in which the SOI is implemented such as:

- Information provided is typically not sufficient to be able to assess interests and/or objectives of a participant;
- Reality of community members participating in multiple ICANN fora and groups - more details should be provided on their role in these different groups (for example, member, voting member, observer);
- Lack of updates to reflect specific interest in a particular effort (SOI is considered a general introduction to a community member's role & interests);

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<sup>1</sup> The BGC WG Report noted that "People who take part in the GNSO Council, and GNSO policy development in particular, often do so because they have an interest in the outcome. These interests can be based on principles or financial gain (either directly in the sense that the person conducts business which could be affected by GNSO policy decisions or indirectly as a representative of a group that could be affected). The traditional concept of conflict of interest test may be difficult to apply in some of these circumstances. Rather than a conflict of interest policy (which might preclude an individual from taking part in a policy process because they stand to gain from the outcome – which is exactly the reason why most participants in the GNSO policy development process do take part), what is needed is a "Statement of Interest" approach that allows the interests of participants to be declared publicly. Consideration should be given to supplementing "Statements of Interest," with "Declarations of Interest" in which participants are asked to state whether they or their employer have issues that are material and specific to "work under consideration" or where a person's or company's "interest" might be a material factor to such work".

- SOI does not reflect if/how a potential outcome may affect a member and/or their employer / client;
- No requirement for consultants or lawyers to disclose their clients (or at a minimum provide a general description of clients and their interests).

Based on these findings, as well as the input that was received in response to the [community outreach survey](#) it conducted as well as bi-weekly meetings, the GNSO SOI TF developed a set of recommendations which have also been replicated in this report.

The TF achieved full consensus on its recommendations, apart from one essential element namely whether there should be an exemption for those prevented by professional ethical obligations to disclose who they are representing in a specific effort. Annex A of the TF's Recommendations Report includes the statements of the different GNSO Stakeholder Groups and Constituencies on this topic that should provide further insight into the different positions.

The TF recommended that the CCOICI would take on the responsibility for resolving this specific issue so that the report and recommendations can be considered by the GNSO Council. Annex A of this report outlines the CCOICI's consideration of this issue.

As the CCOICI was not able to resolve the different positions on the exemption language, the CCOICI agreed to revert to the current, existing exemption language in the SOI to allow the Council to consider all the other recommendations as outlined in section 2 and 3. For clarity, the CCOICI achieved full consensus on the recommendations outlined in section 2 and 3.

## 1.1 About the Council Committee for Overseeing and Implementation Continuous Improvement (CCOCI)

The GNSO Framework for Continuous Improvement Pilot was initiated in June 2021 to determine whether the framework, as outlined [here](#), could serve as an approach for dealing with the various projects that are focused on improvements to GNSO processes and procedures.

This committee consists of one Council member from each Contracted Party House Stakeholder Group, one from each Commercial Stakeholder Group Constituency, one from the Non-Commercial Stakeholder Group and each Non-Commercial Stakeholder Group Constituency, and one Nominating Committee appointee (for a total of 9 members). Council members will serve in representative capacity, where applicable, and as such be responsible for consulting with their respective groups on a regular basis. The names of the members and their affiliation can be found [here](#).

The mailing list archives can be found [here](#). Further information and materials are available on the CCOICI [workspace](#).

## 2. SOI Recommendations

Per the GNSO SOI TF's recommendations, the CCOICI recommends that:

1. The current Statement of Interest template is divided into two parts, namely:
  1. General Statement of Interest which contains general information about a participant to understand their background and motivation for participating in GNSO activities.
  2. Activity Specific Statement of Interest which is information that is provided specific to the activity a participant has requested to participate in. For example, what is their motivation for participation in that activity as well as possible impact on the individual and/or their employer of the outcomes of the process.
2. The General Statement of Interest would consist of the following questions (note, some of these have been updated compared to the current questions to provide further guidance and/or specificity):
  - a. Your name;
  - b. GNSO Stakeholder Group – note, you are expected to indicate all GNSO Stakeholder Groups you participate in and provide details on your level of participation (for example, voting member, non-voting member, observer);
  - c. GNSO Constituency – you are expected to indicate all GNSO Constituencies you participate and provide details on your participation (for example, voting member, non-voting member, observer);
  - d. Affiliation (if not covered by b or c) – if you are affiliated with multiple organizations or entities, please list these all and include a link to their website(s).
  - e. Please identify your current employer(s);
  - f. Please identify any other ICANN activities in which your employer(s) participates, if applicable;
  - g. Please identify your current position(s);
  - h. Please identify the type(s) of work performed;
  - i. Please identify your declared country of primary residence (e.g., country to which you pay taxes);
  - j. Please list any financial relationship beyond de minimis stock ownership you may have with any company that to your knowledge has a financial relationship or contract with ICANN.
  - k. Please identify any Working Groups or other chartered teams in which you are participating (include acronyms, if applicable);
  - l. Additional information (optional – any other declarations or disclosures that are relevant to your participation)
3. The information contained in the General Statement of Interest is required to be updated in a timely manner when changes have occurred that require an update to these questions. In addition, a yearly reminder should be sent to those with an SOI on file with the request to review their information and make sure it is still up to date. If a person with an SOI on file is no longer active in any ICANN activities, they should also be able to request a deletion of their SOI on file and have that request reviewed.

4. The Activity Specific Statement of Interest is to be completed for each GNSO activity a participant signs up for. As part of the introductory meeting, each participant is expected to introduce their activity specific statement of interest and address any questions other participants may have.
5. The Activity Specific Statement of Interest consists of the following (existing questions):
  - a. Do you believe you are participating in this GNSO policy process as a representative of any individual or entity, whether paid or unpaid?  
If the answer is “Yes,” please provide the name of the represented individual or entity. (If professional ethical obligations prevent you from disclosing this information, please enter "Private")
  - b. Please identify any other relevant arrangements, interests, or benefits as requested in the following two questions:
    - i. Do you, your employer or your client have any type of material interest in this GNSO policy process and its outcome? If the answer is “yes,” please describe the material interest:
    - ii. Are there any arrangements/agreements between you and any other group, constituency, client or person(s) regarding your participation as a team member?  
If the answer is “yes,” please describe the arrangements/agreements and the name of the group, constituency, or person(s):
  - c. Additional information (optional)
6. The information contained in the Activity Specific Statement of Interest is required to be updated in a timely manner when changes have occurred that require an update to these questions, if the activity for which the statement has been provided is still ongoing.
7. From a display perspective, the General Statement of Interest is the “parent” while any Activity Specific Statement of Interests are organized as its “children”.
8. A number of use cases should be developed to serve as an example / instructions for those completing the templates to provide the appropriate level of detail / information.

### **Enforcement and Escalation**

The GNSO Statement of Interest Task Force recommends that:

1. An annual reminder is sent to those with a GNSO SOI on file to request the SOI holder to review their information and update it as necessary. If no response is received, or the SOI holder confirms they are no longer actively engaged in GNSO activities, a disclaimer, or similar, is added to the SOI in question to clearly mark that the SOI is ‘inactive’ and may no longer be up to date. Should the SOI holder at a future point in time decide that they want to be allowed to activate their SOI, instructions should be made available for how to do this.
2. This annual reminder will also include information about the applicable enforcement and escalation requirements.

### **Implementation Guidance**

1. ICANN org is expected to explore the technical options for implementing these recommendations and report back to the TF and/or GNSO Council on the available

options as well as any possible limitations that may exist. As part of this reporting back, ICANN org is also expected to share details of how the transition is expected to be managed between existing active GNSO SOIs and new GNSO SOIs.

2. ICANN org will also review what, if any, safeguards need to be implemented, including appropriate disclaimers and retention policies to make sure that the implementation of these new SOI requirements is consistent with applicable data protection laws.

## 3. Proposed Updates to GNSO Operating Procedures

As a result of the proposed recommendations in the previous section, the SOI TF recommends that the following updates are made to the GNSO Operating Procedures:

### ANNEX A – Chapter 6.0: Statements of Interest

#### 6.1 Definitions

Generic Names Supporting Organization (GNSO) Group:

- a. the GNSO Council, or
- b. a work team, working group, committee or other such policy development body formed by and under the supervision of the GNSO Council.

Relevant Party: An individual who participates as a member of a GNSO Group.

General Statement of Interest: A written statement made by a Relevant Party that provides general information about a participant to understand their background and motivation for participating in GNSO activities. ~~A declaration of interests that may affect the Relevant Party's judgment, on any matters to be considered by the GNSO Group.~~

Activity Specific Statement of Interest: A written statement made by a Relevant Party that provides a declaration of interests that may affect the Relevant Party's judgment, on matters to be considered by a specific GNSO Group.

Material Interest: A material interest is an important interest and is generally, but not always, financial in nature. However, in the legal sense, the interest needs to be substantial or of consequence.

#### 6.2 Policy

##### 6.2.1 Purpose

The purpose of this policy is to set forth responsibilities and procedures pertaining to the content, creation, timely update, accuracy, completeness, and compliance of Statements of Interest as defined in [Section 6.1](#).

##### 6.2.2 Compliance

Each Relevant Party is responsible for ensuring that he or she complies with this policy. Failure to comply with these procedures is covered in [Section 6.5](#). This policy is administered by ICANN Staff. Administration includes informing new members of groups of the policies, posting all Statements of Interest, and following up on any requests from the Chairs of GNSO Groups pertaining to this procedure.



### 6.2.3 Exemptions

Full time ICANN Staff members are exempt from the individual responsibility of completing a Statement of Interest by virtue of ICANN posting a global Statement of Interest confirming that all employees and individuals who have an exclusive contract with ICANN are representing the interests of ICANN, and no others, at all times. The exemption does not extend to Staff who do not have an exclusive contract with ICANN.

## 6.3 Statement of Interest Procedures

### 6.3.1 Timeliness

Relevant Parties are required to provide to the GNSO Secretariat a Statement of Interest, updated not less frequently than once a year or whenever there is a material change, setting forth those specified interests, relationships, arrangements, and affiliations that may affect the judgments of Relevant Parties in the conduct of their participation within the GNSO. A completed Statement of Interest, updated at least annually, is a precondition for Relevant Parties to participate in a GNSO Group.

When technically feasible, the GNSO Secretariat will send Relevant Parties an annual reminder of the requirement to review the applicable Statement of Interest and ensure that any applicable updates are made. If no response is received, or the Relevant Party confirms they are no longer actively engaged in GNSO activities, a disclaimer, or similar, is added to the SOI in question to clearly mark that the SOI is 'inactive' and may no longer be up to date. Should the Relevant Party at a future point in time decide that they want to activate their SOI, instructions should be made available for how to do this.

At the beginning of each meeting the GNSO Secretariat and/or the Chair of the GNSO Group shall ask all Relevant Parties whether they have updates to their Statements of Interest.

### 6.3.2 Electronic Form and Publication

To ensure consistency, ICANN Staff shall develop, maintain, and provide to Relevant Parties an electronic Statement of Interest form including procedures and instructions pertaining to its completion online. ICANN Staff shall make available an alternative arrangement (e.g., email) in the event that a Relevant Party does not have the necessary Internet access or capability to complete the form online. ICANN Staff shall post the completed Statements of Interest in the relevant section of the GNSO web site prior to Relevant Parties undertaking any activity.

### 6.3.3 Content

Relevant Parties shall complete all ~~six~~ sections of the Statement of Interest form. ~~As specified below:~~

The General Statement of Interest shall request information such as name; stakeholder group / constituency; current employer; financial relationships, and; any other Working Groups or other chartered teams in which the Relevant Party is participating.

The Activity Specific Statement of Interest shall request information such as whether the Relevant Party is participating as a representative of any individual or entity; identify any other relevant arrangements, interests, or benefits, including whether the Relevant Party's employer or client has any type of material interest in activity and outcomes; any arrangements / agreements between the Relevant Party and any other group, constituency or client.

The detailed questions will be made publicly available and may be reviewed and revised by the GNSO Council from time to time using its relevant processes.

- ~~1. Please identify your current employer(s) and position(s).~~
- ~~2. Please identify your declared country of primary residence (which may be the country to which you pay taxes).~~
- ~~3. Please identify the type(s) of work performed at #1 above.~~
- ~~4. Please list any financial relationship beyond *de minimus* stock ownership you may have with any company that to your knowledge has a financial relationship or contract with ICANN.~~
- ~~5. Do you believe you are participating in the GNSO policy process as a representative of any individual or entity, whether paid or unpaid? Please answer "yes" or "no." If the answer is "yes," please provide the name of the represented individual or entity. If professional ethical obligations prevent you from disclosing this information, please so state.~~
- ~~6. Please identify any other relevant arrangements, interests, or benefits as requested in the following two questions:~~
  - ~~-~~
  - ~~i. Do you have any type of material interest in ICANN GNSO policy development processes and outcomes? Please answer "yes" or "no." If the answer is "yes," please describe the material interest in ICANN GNSO policy development processes and outcomes.~~
  - ~~ii. Are there any arrangements/agreements between you and any other group, constituency or person(s) regarding your participation as a work team member? Please answer "yes" or "no." If the answer is "yes," please describe the arrangements/agreements and the name of the group, constituency, or person(s).~~

### **6.3.4 Timing of Updates and Recordation**

A Relevant Party shall provide any changes/and or updates to his or her Statement of Interest within ten business days of any material change in any information appearing in the statement of interest form. Such changes shall also be recorded in the minutes of the meeting at which the Relevant Party advises of such change and should be posted as soon as possible.

## **6.4 Completeness and Accuracy**

### **6.4.1 Completeness**

ICANN Staff shall review each Relevant Party's Statement of Interest to ensure completeness. If ICANN Staff has reason to believe that a Relevant Party's documentation is not complete, ICANN Staff shall notify the Relevant Party and request that the omitted or missing information be provided or, if there are extenuating circumstances, explanation as to why the document is incomplete. If the matter cannot be satisfactorily resolved with the Relevant Party after a reasonable period, Staff shall raise the matter with the applicable Chair pursuant to [Paragraph 65.4.3](#).

#### **6.4.2 Accuracy**

Concerns raised by ICANN Staff or a member of the ICANN community about the accuracy of a Relevant Party's Statement of Interest, including whether an interest that may affect the Relevant Party's judgment with respect to a pending matter has been disclosed, shall be brought to the attention of the applicable Chair and handled pursuant to [Paragraph 65.4.3](#).

#### **6.4.3 Appeal Process**

If concerns about the completeness and/or accuracy of a Statement of Interest persist after reasonable attempts are made to resolve them with the Relevant Party, the matter shall be brought to the attention of the applicable Chair and handled according to decision-making methodology and appeal process as prescribed in the GNSO Working Group Guidelines ([ANNEX 1](#), Sections 3.6 and 3.7). At each step of the appeal process, every effort should be made to resolve the completeness and/or accuracy concerns by working cooperatively with the Relevant Party.

#### **6.5 Failure to Comply**

##### **6.5.1 Requirement to Participate**

A Statement of Interest form must be submitted by each Relevant Party in accordance with these procedures. If a Relevant Party fails to provide a Statement of Interest once a year or whenever there is a material change, the Chair may temporarily suspend that Relevant Party's participation until the Statement of Interest is provided. Participation shall not be suspended if a Statement of Interest is subject to the Appeals process of [Paragraph 65.4.3](#) until a final determination is made under that process.

##### **6.5.2 Suspension**

Pursuant to the appeal provisions referenced in [Paragraph 65.4.3](#), if it is determined that a Relevant Party has not complied with these procedures, the GNSO Council Chair, in consultation with the Vice-Chairs, may suspend that Relevant Party's participation in a GNSO group until the failure to comply has been remedied. The ICANN General Counsel and GNSO Council will be notified when such actions are taken as a matter of protocol and the decision to take this step will be recorded in the GNSO Council minutes. If the failure to comply pertains to a Chair, the applicable Vice-Chairs shall act pending completion of the appeal process. If the failure to comply pertains to the GNSO Council Chair, the Vice-Chairs shall act after consulting with the ICANN Vice President - Policy Development.

## Annex A - CCOICI Consideration of SOI Exemption

*Note that this section documents the CCOICI's consideration of the exemption option in the SOI. The CCOICI did NOT reach consensus on this topic but is providing the information below to document its consideration as well as the different positions on this topic.*

The CCOICI started its deliberations by considering the views of the GNSO SOI Task Force as outlined in its recommendations report, and specifically Annex A.

### Current Situation and Use of Exemption

The CCOICI then reviewed the exemption language that currently exists in the SOI:

10) Do you believe you are participating in the GNSO policy process as a representative of any individual or entity, whether paid or unpaid?  
If the answer is "Yes," please provide the name of the represented individual or entity. (If professional ethical obligations prevent you from disclosing this information, please enter "Private")

Not everyone was aware that the possibility for an exemption already exists under the current SOI. The SOI TF had originally been aiming to tailor the exemption language more narrowly until public comment suggested it should be completely removed.

As part of its consideration of what problem complete removal of the exemption language would aim to address, the CCOICI reviewed the use of the current exemption in recent policy efforts<sup>2</sup> that did not operate under a representative model. The CCOICI found that a maximum of 0.03% members were making use of the exemption. This very limited use of the exemption led the CCOICI to the conclusion that the requests for removal of the exemption language did not seem to be in response to a current issue but potential future situations. The CCOICI also noted that the tightening of the exemption language, by providing further specificity as to what qualifies as a 'representative' may have even further reduced its use in these efforts.

The CCOICI was also reminded that the SOI in current as well as future state is an honor system – it is dependent on respondents filling out the information truthfully. Although there is a mechanism to challenge accuracy, there is no independent verification of the information that is provided.

### Existing Safeguards

As some of the comments in the TF report expressed concern that use of the exemption could "manipulate efforts toward consensus building and instead stack the deck" and would prevent "which parties are sitting at the table influencing policy decisions", the CCOICI also

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<sup>2</sup> SOIs for the SubPro PDP with a total of 192 members and the RPM PDP with a total of 159 members were reviewed.

looked at other safeguards that are already in place to address such a potential situation, namely:

- The GNSO Council can impose additional participant requirements as part of a charter, including a statement of participation or a declaration of intent, which was used, for example, in the context of the new gTLD Auction Proceeds CCWG to obtain further details from participants regarding their intention to apply for auction proceeds in the future.
- From the GNSO WG Guidelines: “The Chair, in cooperation with the Secretariat and ICANN Staff, is continually expected to assess whether the WG has sufficiently broad representation, and if not, which groups should be approached to encourage participation. Similarly, if the Chair is of the opinion that there is over-representation to the point of capture, he/she should inform the Chartering Organization”.
- The increased use of the representational model also means that members are appointed as representatives of their appointing organization and as a result, would not need to use the exemption.
- From the GNSO Operating Procedures: “Concerns raised by ICANN Staff or a member of the ICANN community about the accuracy of a Relevant Party’s Statement of Interest, including whether an interest that may affect the Relevant Party’s judgment with respect to a pending matter has been disclosed, shall be brought to the attention of the applicable Chair and handled pursuant to Paragraph 6.4.3.”

## Possible Additional Safeguards

The CCOICI recognized that despite these existing safeguards and the increased use of the representational model, the potential for misuse of the SOI exemption does exist in theory. As a result, the CCOICI considered possible additional safeguards such as:

- 1 Adding a provision to the Charter Template that allows Council to limit the participation of those that invoke the exemption in a Consensus Call. The Council could either decide to apply such a limitation at the outset or as a triggering mechanism (e.g. if X percentage of members invoke the SOI exemption, these members will not be able to participate in a Consensus Call). The CCOICI would like to point out that this is not something new – it is already common practice in the representational model that only members participate in a Consensus Call and not participants. If the Council is supportive of this safeguard, the CCOICI would work with the GNSO staff support team to develop proposed language for inclusion in the charter template.
- 2 Review usage of the exemption after implementation of these recommendations. As indicated, it is the expectation that with the narrowing of the language, the need to invoke the exemption may even be further reduced. Nevertheless, the CCOICI recommends that the Council monitors the use of the exemption in future efforts so it can assess whether further modifications are necessary or not. If the Council is supportive of this safeguard, the GNSO staff support team would track this information and report to the Council on the use of the exemption for future efforts. Based on this reporting, the Council can then determine if/when further review is warranted.

- 3 Require those that invoke the exemption provision to state this at the beginning of every meeting of the working group so participants understand that positions are taken based on an unknown third-parties' instructions.

## Version that was considered by the CCOICI

The CCOICI held extensive discussions and considered a number of updates and changes to the exemption language with the aim to achieve consensus. This is the latest version that the CCOICI considered:

Are you participating in the GNSO policy process as a representative of any individual or entity, whether paid or unpaid? The term "representative" in this context means that you are acting on behalf of a third party, whether it is a legal or a natural person (the 'Represented Party') by whom you have been appointed, specifically for this activity or to a role that encompasses this activity, to represent and/or advocate for the Represented Party's interests, views and positions.

If the answer is "Yes," please provide the name of the represented individual or entity. (If professional ethical obligations prevent you from disclosing this information, you must provide details on which ethical obligations prevent you from disclosing and must provide a high level description of the entity that you are representing without disclosing its name as well as declare whether, to the best of your knowledge, that entity is actively participating or being represented in other GNSO SG/Cs/SO/ACs, for example "I represent a Registry client who is also actively participating in the RySG", "I am representing a governmental entity, who is also actively participating in the GAC" or "I represent a large brand holder in the entertainment sector who, to the best of my knowledge, is not actively participating or being represented in other ICANN groups".

Although this version was deemed acceptable by most groups and considered an improvement compared to the current language, the Registry Stakeholder Group and Registrar Stakeholder Group indicated that they would not be able to live with this version as in their opinion participation in policy development requires full transparency in line with the ICANN Bylaws.

Recognizing that the exemption language is only one small part of the SOI recommendations, the CCOICI agreed to revert to the current applicable exemption language in this Recommendations Report to allow the GNSO Council to consider the recommendations that did achieve full consensus.