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The Internet Committee of the International Trademark Association is pleased to provide comments on the proposed ICANN Board of Director's Code of Conduct (Code).

INTA's Internet Committee believes the Code is relevant to at least three Responsibilities ICANN has promised to undertake as part of its obligations under the Joint Project Agreement, specifically:

- Improving processes and procedures to encourage improved transparency, accessibility, efficiency, and timeliness in the consideration and adoption of policies related to the technical coordination of the Internet DNS...
- Maintaining excellence and efficiency in operations, including good governance, organizational measures to maintain stable, international private sector organization, and shall maintain relevant technical and business experience for members of the Board of Directors, executive management, and staff...
- Conducting a review of, and shall make necessary changes in, corporate administrative structure to ensure stability, including devoting adequate resources to contract enforcement, taking into account organizational and corporate governance 'best practices'...

The Internet Committee does not believe the proposed Code of Conduct can assist ICANN in meeting its JPA responsibilities because the Code's language is overly broad and relies mainly upon ICANN's opaque Conflicts of Interest Policy (see Section C. Conflicts of Interests) to inform Board members of possible ethical considerations. The proposed Code also importantly lacks the appropriate procedural mechanisms that effectively render its provisions unenforceable.

For example, the proposed Code's sole enforcement provision states: "Breaches of this Code, shall be reviewed by such Committee as designated by the Board, which may make recommendations to the full Board for corrective action, if deemed necessary." This provision does not specify the protocol that should be followed for reporting a breach of conduct, the processes and characteristics of the Review Committee, as well as other issues relevant to the adjudication of the reported unethical conduct.

Regarding ICANN's current Conflicts of Interests policy, as INTA stated during the Mid-Term Review of the JPA, (please see:

http://www.ntia.doc.gov/ntiahome/domainname/jpacomments2007/jpacomment_079.pdf)

Good governance mandates the avoidance of conflicts of interest and *the appearance of impropriety* (emphasis added). The conflict of interest policy currently applied to the Board is insufficient. It is not sufficient for a Board member with a conflict of interest to simply forego his or her vote on the final Board action on the relevant issue; that Board member must recuse

herself/himself from all Board discussion and interactions with ICANN stakeholders related to the particular issue. Allowing a Board member to participate in the discussion of an issue in which he or she is prohibited from voting effectively renders moot the prohibition on voting.

In light of the importance of Board decisions in ICANN's governance, the Internet Committee believes that a community review of ICANN's Conflict of Interest policy is long overdue, and urges ICANN to undertake this review as soon as possible in order to clarify the responsibilities of its Board of Directors. The Committee looks forward to contributing to the review and recommends that ICANN withhold adopting the proposed Code of Conduct until: a) the language is clarified, b) the enforcement provisions are strengthened, and c) until such a review of the Conflicts policy takes place. Thank you for considering our views on this important topic.