



CADNA Comments on the ICANN Board Conflicts of Interest Review – Revised Conflicts of Interest Policy and Related Governance Documents

The Coalition Against Domain Name Abuse (CADNA) appreciates the opportunity to comment on the "ICANN Board Conflict of Interest Review – Revised Conflicts of Interest Policy and Related Governance Documents." CADNA believes that as an organization responsible to a global community of stakeholders, ICANN is obligated to carry out its policy creation and technical functions in a transparent, objective, and honest manner. Indeed, ICANN's responsibility to oversee the functions of such a powerful resource as the Internet means that the Board should be held to the highest possible ethical standards. CADNA believes that failure to uphold impeccable principles, values, and ethics could seriously undermine ICANN's efforts and, as a result, destabilize the Internet.

Unfortunately, events over the last year have called into question ICANN's commitment to operating in a transparent, ethical manner. Most notably, the departure of ICANN Chairman of the Board Peter Dengate Thrush shortly after the approval of the New gTLD Program, only to accept a position at an organization that stood to benefit substantially from the passage of that program, led to accusations that ICANN operated as a "revolving door" between its domain policy-creation arm and the domain industry itself. It should come as no surprise to ICANN that such actions seriously call into question the motivations behind, and legitimacy of, decisions made at its highest levels. While CADNA recognizes that high-ranking ICANN Board and staff members have valuable skills and knowledge to contribute to the private sector, such relations cannot be perceived to undermine ICANN's legitimacy.

CADNA believes that the revised Conflicts of Interest Policy ("COI Policy") represents a step in the right direction towards building global confidence in ICANN. Article 1, Section 1.1 of the revised COI Policy states: "The purpose of this Board Conflicts of Interest Policy ("COI Policy") is to prevent any Conflict of Interest or the appearance of a Conflict of Interest from affecting any decision-making involving ICANN, to ensure that the deliberations and decisions of ICANN are made *solely in the interests of the global Internet community, as a whole...*" (emphasis added). CADNA applauds this strong sentiment. However, save for the addition of the word "solely" this does not represent a major change from the old ICANN Board COI Policy. CADNA believes it is the actions of ICANN Board Members that will prove or disprove the organization's commitment to the "global Internet community."

Despite this, CADNA was pleased to see that the revised COI Policy includes a greater degree of specificity. For example, Section 1.1 represents a departure from the previous COI Policy by clearly spelling out that "Covered Persons are obligated to disclose *ethical, legal, financial and other Conflicts of Interest* involving ICANN and remove themselves from a position of decision-making authority with respect to any Conflict of Interest involving ICANN," (emphasis added).



Likewise, CADNA appreciates the inclusion of "Potential Perceived Conflicts" in the new code. As mentioned above, ICANN is accountable to a global community, which is likely to have diverse views on what constitutes a conflict of interest. By obligating Board members to disclose even "Potential Perceived Conflicts" as well as "Potential Direct Conflicts," ICANN will increase its transparency and foster trust with all stakeholders. CADNA is also glad to see the inclusion of Article 2, Section 2.4(a), which states that, "After disclosing the existence of a Potential Conflict, Interested Persons shall refrain from using their personal influence (either at or outside a Board meeting) to influence ICANN's handling of the transaction, contract, arrangement, policy, program or other matter."

Article 2, Section 2.5(b) is also an important addition. By explicitly vesting Disinterested Directors with the authority to take corrective action "including, but not limited to, removal of a non-disclosing Director or Board Liaison in accordance with ICANN's Bylaws and applicable law," the new COI Policy offers a strong incentive for Covered Persons to abide by its terms.

Despite these important improvements, CADNA would have liked to see the revised COI Policy include even stricter provisions designed to prevent the conflict of interest, or appearance of conflict of interest, for Board Members after leaving ICANN. This could perhaps be accomplished by the inclusion of a one-year "non-serve" clause that explicitly prohibits Covered Persons from certain accepting positions.

Overall, however, CADNA is pleased to see that the revised COI Policy will hold Board members and other Covered Persons to a higher standard of ethical behavior than the previous policy. CADNA is fully supportive of ICANN's multi-stakeholder system and has no wish to see ICANN's policy creation functions vested in a global governing body such as the United Nations, as has been recently suggested by several governments. However, CADNA ultimately believes that it will be the actions of ICANN and its Board that determine global confidence in, and support of, the organization. Unless ICANN and its Board fully commit to the terms of this new Policy and its more stringent provisions, the public trust in ICANN is likely to continue to flounder.