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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on the ICANN Board Conflicts of Interest Review - Revised Conflicts of Interest Policy and Related Governance Documents

Introduction

By the Staff of ICANN

Olivier Crépin-Leblond, Chair of the At-Large Advisory Committee (ALAC), composed an initial draft of this Statement both after discussion of the topic within At-Large and as a follow up to the [*ICANN Board Conflicts of Interest Review - Revised Conflicts of Interest Policy and Related Governance Documents*](#), which was submitted on 2 April 2012.

On 20 April 2012, the Statement was posted on the [*At-Large ICANN Board Conflicts of Interest Review - Revised Conflicts of Interest Policy and Related Governance Documents Workspace*](#). On that same day, the Chair of the ALAC, requested At-Large Staff to send a reminder for comments on the draft Statement to all At-Large members via the ALAC-Announce Mailing List.

On 24 April 2012, the Chair of the ALAC requested that Staff open a five-day ALAC ratification vote on the Statement. The Chair also requested that the Statement be transmitted to the public comment process, copying the ICANN Staff member responsible for this public comment topic, along with a note saying that the document was currently undergoing ALAC ratification with a vote to start shortly.

[End of Introduction]

The original version of this document is the English text available at <http://www.atlarge.icann.org/correspondence>. Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

ALAC Statement on the ICANN Board Conflicts of Interest Review - Revised Conflicts of Interest Policy and Related Governance Documents

The At-Large Advisory Committee (ALAC) has already filed a first statement during the present comment period, marked as an “advance notice” due to the short time (21 days) allocated to the initial phase of the comment period. As a matter of fact, we echo the concerns made by the IPC and others that 21 days are too short for our needs to collect input from our five regions.

The present statement builds upon our “first notice”. Since then, we have noted a number of other comments on the issue of Conflicts of Interest (Col), received in the first comment period, with which we concur.

Introduction

The At-Large Advisory Committee is concerned by the content of the Board's response to the rising levels of attention given conflict of interest matters both inside and outside the ICANN community. We are troubled by the possible impacts on ICANN's credibility as a steward of the multi-stakeholder model of Internet governance and the sustainability of that model in the global environment, especially in light of clear and present threats.

In this document we make a recommendation which, in our view, would begin to redress the situation: the creation of a cross community Commission with the mission to recommend clear and concise steps to enhance the interests of global Internet users.

Main Issues

The document presented for public comment is unfortunately of little consequence when ICANN is repeatedly accused by many outside of ICANN to be a cartel of insiders, looking out for little more than the enrichment of a small number of its members. Indeed, many of these critics consider that the public interest appears to be ignored altogether. The ALAC is highly concerned that some of the commercial entities likely to capitalize the most on the new gTLD program were built by those very individuals who have worked as employees and key volunteers in ICANN and on the ICANN Board to build the policies under which their business will operate in the future.

This concern is widely echoed outside the ICANN microcosm. Indeed, in its explanatory text for rejecting all of the proposals - including one from ICANN - for managing the IANA function, the United States Department of Commerce underlines a “need for structural separation of policy-making from implementation, a robust companywide conflict of interest policy, provisions reflecting heightened respect for local country laws and a series of consultation and reporting requirements to increase transparency and accountability to the international community.” Their message is unmistakable and the ALAC believes this warning should be heeded by ICANN.

Current Situation

The ALAC welcomes the creation of a Board New gTLD Program Committee 2012.04.10.01-2012.04.10.04 which has been delegated with all legal and decision making authority of the Board regarding the new gTLD Program. However, the Resolution rationale explains that Board members not on the committee are all conflicted. This is a regrettable situation, and the ALAC is concerned that neither the ICANN Board Chair nor the Vice Chair are part of this Committee.

The creation of this non-conflicted Program Committee is definitely a step in the right direction, but ICANN needs to go much further in order to regain public confidence in the multi-stakeholder model it is supposed to embody.

The ALAC considers it necessary to remind the Board that ICANN is expected to operate according to the Affirmation of Commitments signed with the US Department of Commerce.

Specifically looking at the Affirmation of Commitments, we note:

“9.1 Ensuring accountability, transparency and the interests of global Internet users:”

Although the paragraph does not explicitly include a mention of conflicts of interests, it is clear that any existing, or even a perception of Conflict of Interest in its Board may have a direct negative impact on the interests of Internet users around the world.

Recommendation

The ALAC therefore advises and recommends that a cross-community Commission (or Task Force, or Cross-Community Working Group) be set-up to examine ICANN’s conflicts of interest at all levels as well as any other structural issues that in effect prevent ICANN from meeting this commitment. In order to carry out its duties fully, this entity should have the possibility to engage the services of a few recognized experts, from outside the circle of ICANN, known for their successful implementation of corporate governance, especially in not-for-profit organizations worldwide, in order to help develop a CoI framework for ICANN.

Finding and recommending hasty solutions in a Statement of the ALAC would lead to an unhealthy atmosphere of inquisition for the multi-stakeholder bottom-up model. Setting-up a Commission to come up with clear and concise steps to enhance the global public interest for Internet users is the only safe and sure way forward.

The ALAC would naturally need to be represented in such a cross-community Commission. The ICANN Bylaws (Article XI, Section 2.4) warrant such a role for the ALAC:

“a. The At-Large Advisory Committee (ALAC) is the primary organizational home within ICANN for individual Internet users. The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users.”