



## Comments of the Intellectual Property Constituency

### On Revised Conflicts of Interest Policy

April 2, 2012

The GNSO Intellectual Property Constituency (IPC) offers the following comments on revised conflicts of interest policy and related governance documents.

The IPC has a strong interest in improvement of ICANN's conflict of interest policy.<sup>1</sup> However, it finds itself unable to offer substantive comments at this time for the following reasons.

1. The 21-day public comment period is inadequate. As expressed on a number of occasions, including at the Costa Rica meeting by IPC's president (see <http://costarica43.icann.org/meetings/sanjose2012/transcript-ppc-15mar12-en.pdf>, at pp. 8-10), limiting the public comment period to 21 days has the inevitable effect, even if not the purpose, of restricting or eliminating the ability of representative organizations such as the IPC to comment on issues. This is particularly true when, as is the case with IPC, the representative organization is itself comprised largely of other representative organizations. The reduced duration of the baseline public comment period is antithetical to true transparency and accountability.

2. The exclusionary effect of the reduced public comment period is exacerbated when much of the 21-day period occurs during an ICANN international public meeting. The documents on which comment is now invited were released on the day that the ICANN Costa Rica meeting opened. Thus, fully one-third of the entire public comment period coincides with the pendency of this meeting. ICANN has long made it a practice to exclude the periods of an international public meeting from the calculation of deadlines for public comment, but that practice appears to have been abandoned in this case.

3. The materials presented for public comment are incomplete and subject to the completion of two more Board-commissioned reviews on the same topic, which may lead to changes to the materials regardless of what public comments are received. See pages 46-49 of the Costa Rica ICANN meeting public forum, at <http://costarica43.icann.org/node/29713>. In

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<sup>1</sup> In November, 2011, IPC recommended that implementation of a strong conflict of interest policy should be explicitly recognized as a strategic priority for ICANN in the organization's 2012-2015 Strategic Plan. See [http://ipconstituency.org/PDFs/IPC\\_Comments\\_on\\_ICANN\\_draft\\_strategic\\_plan11-17-2011.pdf](http://ipconstituency.org/PDFs/IPC_Comments_on_ICANN_draft_strategic_plan11-17-2011.pdf). Although ICANN's publicly stated timetable called for Board approval of the strategic plan in December 2011, see <http://www.icann.org/en/news/announcements/announcement-2-30may11-en.htm>, it does not appear that this has occurred yet. IPC takes this opportunity to reiterate this recommendation.

these circumstances, it is impossible to justify diverting IPC's extremely limited volunteer resources to the preparation of comments on a proposal that is still in the process of being developed. This is especially true in light of the fact that, as these comments are being prepared, ICANN also has 13 other public comment periods open.

While IPC reserves the right to provide additional views during the reply phase of this public comment period, we are unable to provide a more substantive response at this time, for the reasons noted.

Respectfully submitted on behalf of the IPC,

By Steve Metalitz, IPC president