

OSC GNSO OPERATIONS WORK TEAM
Suggestions for Statement of Interest/Declaration of Interest
Draft Definitions, Requirements, and Policy

Definitions:

Relevant Party: An individual who participates as a member of a work team, working group, committee member or other such policy development bodies formed by, and under the supervision of, the GNSO, as well as all elected and appointed members of the GNSO Policy Council.

Statement of Interest: A statement made by Relevant Parties involved in policy development or other relevant processes, not less frequently than once a year and updated whenever there is a material change, that provides a declaration of direct or indirect interests that may affect a Relevant Party's judgment, or be perceived to affect that individual's judgment on all matters to be considered by GNSO Policy Council, members of Working Groups, or other relevant policy development bodies.

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Disclosure of Interest: A disclosure made by a Relevant Party of direct or indirect interests that may be commercially or non-commercially oriented (e.g., commercial benefit such as payment; non-commercial or non-tangible forms of benefit such as publicity, political or academic visibility) that may affect judgment, or be perceived to affect a Relevant Party's judgment on a particular issue.

Draft Policy Recommendation

1. Purpose

1.1 The purpose of this policy is to set forth the procedures for Relevant Parties to follow to state not less frequently than once a year and updated whenever there is a material change, that provides for all business and other direct and indirect relationships or affiliations that relate in any way to the business and other affiliations of ICANN and to disclose any direct or indirect interests that may affect a Relevant Party's judgment, or be perceived to affect a Relevant Party's judgment.

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2. Status of Policy

2.1 Each Relevant Party is responsible for ensuring that he or she complies with this policy.

2.2 The execution of this policy is managed by ICANN staff.

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3. Statement of Interest

3.1 Relevant Parties are required to provide to the GNSO Secretariat a Statement of Interest not less frequently than once a year, and updated whenever there is a material change, setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Annual acknowledgement of receipt of Statement of Interest is a general precondition for Relevant Parties to participate in the GNSO.

3.2 To ensure consistency, ICANN staff shall develop and provide to Relevant Parties an electronic Statement of Interest form. ICANN staff shall post the completed Statements of Interest in the relevant section on the ICANN web site prior to Relevant Parties undertaking any activity and at least annually in the case of GNSO Policy Councilors.

3.3 Relevant Parties shall answer the following questions in their Statements of Interest:

1. Please identify your current employer(s) and position(s)
2. Please identify the type(s) of work performed at #1 above
3. (i) Do you have any ownership or investment interest in any entity with which ICANN has a transaction, contract, or other arrangement (e.g., Registries, Registrars, Consultants, etc.)? Please answer "yes" or "no." If the answer is "yes," please provide the name of the entity. (ii) Do you have a compensation arrangement with any entity or individual with which ICANN has a transaction, contract, or other arrangement (e.g., does the Relevant Party have a consulting arrangement with a Registrar, etc.)? Please answer "yes" or "no." If the answer is "yes," please provide the name of the entity. (iii) Do you have potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which ICANN is negotiating a transaction, contract, or other arrangement? Please answer "yes" or "no." If the answer is "yes," please provide the name of the entity.
4. Are you 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.
5. (i) Do you have any type of commercial or non-commercial interest in ICANN GNSO policy development processes and outcomes? Please answer "yes" or "no." If the answer is "yes," please describe the commercial or non-commercial 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 nomination/selection 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). (iii) Do you receive any tangible or intangible benefit from participation in ICANN GNSO policy development processes and outcomes? For example, if you are an academic or NGO and use your position to advance your ability to participate, this should be a part of the statement of interest, just as should employment by a contracted party, or a business relationship with a non-contracted party who has an interest in policy outcomes. Please answer "yes" or "no." If the answer is "yes," please describe the tangible or intangible benefits.

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Comment: There has to be some allowance for confidentiality here; I don't think that we should require – as a precursor to participation in ICANN – that people should have this information publicly available.

RA Comment: Unless we have stringent rules we have nothing. What is needed is a reality check by using the GCOT as guinea pigs to see how we like the outcome.

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Comment: This wording is very broad ... [6]

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3.4. A Relevant Parties shall provide any changes and or updates to his or her Statement of Interest within ten business days. Such changes shall be recorded in the minutes of the meeting at which Relevant Parties advise of such change.

4. Disclosure of Interest

4.1 Relevant Parties shall provide a Disclosure of Interest setting forth any direct or indirect interests that may affect a Relevant Party's judgment on an issue that is under review, consideration or discussion.

4.2 The GNSO Council Chair or Vice-Chair, Working Group Chairs, Work Team chairs, Committee Chairs, and chairs of any other organizations formed by the GNSO shall remind all participants to provide Disclosures of Interest and updates to Disclosures of Interest at the beginning of each meeting during which the Relevant Parties will discuss or act upon the specific matter(s) to which the disclosure pertains and this disclosure shall be recorded in the minutes of that meeting. All parties should be polled for an affirmation that there is no change to their respective Disclosures of Interest and the responses recorded in all minutes. At that time anyone who has a question with regard to a Disclosure of Interest from the Relevant Party will communicate that to the Chair.

4.3 At the beginning of any ICANN public meeting, forum, or discussion being coordinated and/or moderated by the GNSO, the person acting as Chair or coordinator of the public meeting, forum, or discussion shall encourage all speakers to provide all Disclosures of Interest prior to beginning their remarks.

4.4 If it is determined that a Relevant Party may not have disclosed a direct or indirect interest that may affect Relevant Parties' judgment, or be perceived to affect the Relevant Party's judgment with respect to any matter pending before the GNSO Council or other policy development body prior to any action by the GNSO Council on that matter, the GNSO Council Chair, in consultation with the Vice-Chair, may ask that the 'non-disclosing' Relevant Party provide a disclosure prior to any further action on the related matter. If that Relevant Party refuses to provide a Disclosure of Interest as requested by the GNSO Council Chair, the Chair, in consultation with the Vice-Chair, may suspend that Relevant Party's participation in GNSO Council Meetings or other such policy development process until a full Disclosure of Interest is provided. The ICANN General Counsel 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 minutes. If the complaint is about the Chair, the Vice Chair shall act after consulting with the ICANN Vice President, Policy Development. If the complaint is about the Vice Chair, the Chair shall act after consulting with the ICANN Vice President, Policy Development

5. Procedures to Ensure Truthfulness and Completeness of Statements of Interest and Disclosures of Interest

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Comment: Same comment; further, statements of interest are made in forms, not in speech – if a Relevant Party notes a change while on record at a meeting, of course it's recorded, but the important focus here is getting the information on file in the form.

RA Comment: with the time limit of 10 ... [7]

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Comment: This is very broad

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5.1 ICANN staff shall review Relevant Parties' Statements of Interest to ensure truthfulness and completeness. If ICANN staff has reason to believe that a Relevant Party's Statement of Interest is not truthful or complete, ICANN staff shall notify the GNSO Chair or, in lieu of being able to contact the Chair, the Vice Chair, of the situation. Staff shall then notify the Relevant Party to seek clarification regarding the areas of untruth or incompleteness.

5.2 If concerns about the truthfulness and completeness of Relevant Parties' Statements of Interest or Disclosure of Interest are raised by ICANN staff or members of the ICANN community that staff are unable to address according to 5.1 above, the GNSO Council Chair or Vice Chair shall call for volunteers from the stakeholder groups, with at least two GNSO Councilors, to form an ad hoc five person Statement of Interest/Declaration of Interest Review Committee to address these concerns. The Review Committee shall investigate the nature of the concerns, address them with the Relevant Party, and recommend a resolution. During this review period, which shall be as soon as practicable, the affected Relevant Party will be suspended and thus will not be able to participate further on the Council or other such policy development body until such time as a final resolution has been established. ICANN staff support shall be available at all times to support the review process and document the steps and decisions taken in the interest of transparency.

Comment: I think that this is strong language to use and could set up the organization for defamation-related challenges. I think that it should be less strict – “has reason to believe that a Relevant Party’s Statement of Interest or Disclosure of Interest is incomplete or incorrect, ICANN Staff shall notify the Relevant Party and seek a clarification or correction of the Statement or Disclosure, if necessary.

RA: AGREED and edits have been made accordingly

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Comment: Should the first instance be to the chair, or should there be an opportunity to cure first? RA Comment: NO, the only deterrent the community has is embarrassment.

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Comment: See comment above. Concerns should be raised before a determination is made.

Comment: This is not a proper use of the ICANN Ombudsman. The Ombudsman is an independent reviewer, and involving him in the process would deprive participants of the ability to seek recourse/investigation t[... [17]

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Comment: Again, this seems undefined enough to be used as a tool to silence { ... [20]

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