

DRAFT - Post-Transition IANA Conflicts of Interest Policy

ARTICLE I -- PURPOSE AND ADMINISTRATION

Section 1.1. [Post-Transition IANA] (“PTI”) is committed to the highest levels of integrity. Covered Persons are expected to conduct their relationships with each other, PTI, ICANN and outside organizations with objectivity and honesty. Covered Persons are obligated to disclose ethical, legal, financial and other Conflicts of Interest involving PTI and remove themselves from a position of decision-making authority with respect to any Conflict of Interest involving PTI. The purpose of this 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 PTI, to ensure that the deliberations and decisions of PTI are made solely in the interests of the global Internet community, as a whole, and to protect PTI’s interests when PTI is contemplating entering into a transaction, contract or arrangement or approving a policy, program or other matter that might benefit the personal interests of a Covered Person.

Section 1.2. A Covered Person may not use his or her position with respect to PTI, or confidential corporate information obtained by him or her relating to PTI, in order to achieve a financial or other benefit for himself or herself or for a third person, including another nonprofit or charitable organization.

Section 1.3. This COI Policy is intended to supplement but not to replace any applicable laws governing conflicts of interest applicable to PTI.

Section 1.4. PTI’s Board of Directors (the “Board”) shall administer and monitor compliance with this COI Policy in accordance with the terms contained herein.

Section 1.5. Certain capitalized terms used in this COI Policy shall have the meanings set forth in Article VII of this COI Policy.

ARTICLE II -- PROCEDURES REGARDING CONFLICTS OF INTEREST

Section 2.1. Duty to Disclose.

(a) In connection with any proposed transaction, contract, arrangement, policy, program or other matter being considered by PTI, a Covered Person shall promptly disclose the existence of any Potential Direct Conflict that may give rise to a Conflict of Interest with respect to the proposed transaction, contract, arrangement, policy, program or other matter. Such disclosure shall be made to the Secretary setting forth, in writing, all relevant facts relating to the Potential Direct Conflict. All disclosures provided to the Secretary under this COI Policy shall be provided simultaneously to the Chair of the Board (the “Chair”), so long as the Chair is Disinterested. When in doubt, Interested Persons shall disclose matters as Potential Direct Conflicts.

(b) Potential Perceived Conflicts can be seriously damaging to the multi-stakeholder community’s confidence in PTI. A Covered Person shall promptly

disclose the existence of any Potential Perceived Conflict, which shall be treated as equivalent to a Potential Direct Conflict until such time as the doubt is removed and the matter is determined after investigation of all the relevant facts in accordance with this COI Policy. When in doubt, Interested Persons shall disclose matters as Potential Perceived Conflicts and disclose all relevant facts relating to the Potential Perceived Conflict in the manner specified in Section 2.1(a)~~to the Secretary.~~

(c) If any Covered Person has reason to believe that another Covered Person has a Potential Conflict, the Covered Person with such belief shall inform the Secretary, in the manner specified in Section 2.1(a), including disclosing all relevant facts relating thereto.

(d) The Interested Person shall provide the Chair (if Disinterested) and the Secretary with an updated Statement (as provided for in Article V below) at the time any disclosure is made pursuant to this Section 2.1. The disclosure to the Chair (if Disinterested) and the Secretary of a Potential Conflict shall be made promptly and pursuant to such procedures as the Board may establish from time to time.

Section 2.2. Determining Whether a Conflict of Interest Exists.

(a) After disclosure of a Potential Conflict by an Interested Person, the Secretary will promptly inform the Board of the Potential Conflict and provide the Board with all information provided by the Interested Person related thereto. At the discretion of the Disinterested Directors, the Interested Person may present further information regarding, or otherwise discuss with such Disinterested Directors, the Potential Conflict.

(b) Thereafter, in the absence of the Interested Person, the Disinterested Directors shall determine, by a majority of the Disinterested Directors, whether or not the circumstances disclosed by the Interested Person regarding the Potential Conflict constitute a Conflict of Interest. The determination by the Disinterested Directors in this regard is conclusive and may not be challenged by the Interested Person. Such determination shall be recorded pursuant to Section 3.1 hereof. Such determination shall be made prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Potential Conflict.

(c) Notwithstanding the foregoing, (i) any transaction in which a Director has a material Financial Interest shall constitute a Conflict of Interest and shall be addressed in accordance with the procedures in Section 2.4 and (ii) the approval requirements set forth in Section 2.3 must be satisfied for any Common Director Transaction.¹

¹ The language in 2.2(c)(i) was added to ensure that the approval requirements under §5233 of the CA code are met when a director has a material financial interest in a transaction - these approval requirements are addressed in

Section 2.3. Procedures for Approving Common Director Transactions.

(a) Prior to consummating any Common Director Transaction (other than a Common Director Transaction between PTI and ICANN, addressed in Section 2.3(b) below), the following requirements must be met: (i) the material facts as to the transaction and the relevant directorships must be fully disclosed or known to the Disinterested Directors and (ii) the transaction must be approved in good faith by a majority of the Disinterested Directors.

(b) A Common Director Transaction between PTI and ICANN must be just and reasonable as to PTI at the time it is approved by the Board.

(c) The procedures and determinations made under this Section 2.3 shall be recorded pursuant to Section 3.1, as applicable for Common Director Transactions.

(d) For the avoidance of doubt, if a Director has a material Financial Interest in a Common Director Transaction, the transaction shall be addressed in accordance with the procedures in Section 2.4.

~~Section 2.3.~~Section 2.4. Procedures for Addressing a Conflict of Interest.

(a) If the Disinterested Directors determine that a Conflict of Interest exists, the Conflicted Person may make a presentation to the Disinterested Directors regarding the Conflict of Interest. After any such presentation, subject to Section 2.45(d), the Conflicted Person shall leave the meeting and shall not be present during any discussion of the Conflict of Interest.

(b) The Chair ~~of the Board~~ (if Disinterested) or a majority of the Disinterested Directors, shall, if appropriate, appoint a Disinterested person or committee to investigate alternatives or modifications, as applicable, to the proposed transaction, contract, arrangement, policy, program or other matter. If the Conflicted Person is a Director, the findings shall be reported to the Disinterested Directors at the next Board meeting and prior to the Disinterested Directors approving or adopting, as applicable, the transaction, contract, arrangement, policy, program or other matter giving rise to such Conflict of Interest.

(c) After investigating the proposed transaction, contract, arrangement, policy, program or other matter, the Disinterested Directors shall determine whether PTI can obtain with reasonable efforts a more advantageous transaction, contract, arrangement, policy, program or other matter in a manner that would not give rise to or would alleviate or mitigate a Conflict of Interest. Such determination shall be made prior to the Disinterested Directors approving or adopting, as applicable,

Section 2.4 of the policy. The language in 2.2(c)(ii) was added to ensure that the approval requirements under §5234 of the CA code are met for common director transactions - these approval requirements are addressed in Section 2.3 of the policy.

the transaction, contract, arrangement, policy, program or other matter giving rise to such Conflict of Interest.

(d) If a more advantageous transaction, contract, arrangement, policy, program or other matter is not reasonably available to PTI under circumstances not producing a Conflict of Interest, or the transaction, contract, arrangement, policy, program or other matter cannot be modified to alleviate or mitigate a Conflict of Interest, the Disinterested Directors shall determine by (i) a majority vote or (ii) as required by the Bylaws where a Director has a material Financial Interest, by a vote of (A) all of the Disinterested Directors and (B) ICANN, whether the transaction, contract, arrangement, policy, program or other matter creating the Conflict of Interest is in PTI's best interest, for its own benefit, and whether it is fair and reasonable to PTI. In conformity with those determinations, the Disinterested Directors shall make its decision as to whether PTI should enter into the transaction, contract or arrangement or approve the policy, program or other matter.

Section 2.4.Section 2.5. Duty to Abstain.

(a) 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 PTI's handling of the transaction, contract, arrangement, policy, program or other matter.

(b) No Director may vote on, and each Director must abstain from voting on, any matter in which the Director has a Conflict of Interest.

(c) In the event of such an abstention, the abstaining Director shall state the reason for the abstention, which shall be recorded pursuant to Section 3.1.

(d) No Director may participate in Board committee or Board deliberations on any transaction, contract, arrangement, policy, program or other matter in which he or she has a Conflict of Interest without first disclosing the conflict (and otherwise complying with the requirements of this COI Policy) and until a majority of Disinterested Directors present agree on whether and in what manner the Conflicted Person may participate.

Section 2.5.Section 2.6. Violations of the Conflicts of Interest Policy.

(a) If the Disinterested Directors have reasonable cause to believe a Covered Person has failed to disclose a Potential Conflict, the Board shall inform the Covered Person, and initiate the procedures described in this Article II Sections 2.1, 2.2 and 2.3.

(b) If the Disinterested Directors determine that a Director has intentionally failed to disclose a Potential Conflict, the Disinterested Directors shall take such corrective action as they deem appropriate, including, but not limited to, seeking removal of a non-disclosing Director in accordance with PTI's Bylaws and applicable law.

ARTICLE III -- RECORDS OF PROCEEDINGS

Section 3.1. The written or electronic records of the Board relating to Conflicts of Interest shall contain:

- (a) The names of Covered Persons who disclosed or otherwise were found to have a Potential Conflict in connection with a proposed contract, arrangement, policy, program or other matter;
- (b) The nature of the Potential Conflict;
- (c) Any action taken to determine whether a Conflict of Interest was present;
- (d) The Board's or Disinterested Directors' decision as to whether a Conflict of Interest in fact existed;
- (e) The names of the persons who were present for discussions and votes relating to the transaction, contract, arrangement, policy, program or other matter;
- (f) The content of the discussion, including any alternatives to the proposed transaction, contract, arrangement, policy, program or other matter; and
- (g) A record of any votes taken in connection therewith.

ARTICLE IV -- COMPENSATION

~~Section 4.1. A Director who receives Compensation, directly or indirectly, from PTI for services may not vote on matters pertaining to the Director's Compensation.~~

~~Section 4.2.~~Section 4.1. -A Director may not vote on matters pertaining to Compensation received, directly or indirectly, from PTI by a member of the Director's Family or by an individual with whom a Director has a close personal relationship, including, but not limited to, any relationship other than kinship, spousal or spousal equivalent that establishes a significant personal bond between the Director and such other individual that in the judgment of the Board could impair the Director's ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of PTI.

~~Section 4.3.~~Section 4.2. No Covered Person who receives Compensation, directly or indirectly, from PTI, either individually or collectively, is prohibited from providing information to the Board regarding the Covered Person's Compensation.

ARTICLE V -- ANNUAL STATEMENTS

Section 5.1. Each Covered Person shall annually, or promptly upon becoming a Covered Person, sign a Statement which affirms such Covered Person: (a) has received a copy of the COI Policy; (b) has read and understands the COI Policy; (c) has agreed to comply with the COI Policy; and (d) understands PTI intends to be a tax-exempt organization

described in § 501(c)(3) of the Internal Revenue Code and that in order to obtain and maintain its federal tax exemption, PTI must engage primarily in activities which accomplish one or more of PTI's tax-exempt purposes.

Section 5.2. On an annual basis, all Covered Persons shall disclose on their Statement a list of all organizations in which he or she has a Financial Interest or Duality of Interest.

Section 5.3. On an annual basis, the Board shall review the Statements of the Covered Persons to determine whether any Covered Person has a Conflict or Conflicts of Interest that is, or in the aggregate are, so pervasive that the Conflicted Person should no longer serve in his or her respective role.

ARTICLE VI -- PERIODIC REVIEWS

Section 6.1. To ensure PTI operates with the highest levels of integrity and in a manner consistent with its tax-exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, the Secretary and the Treasurer shall conduct periodic reviews of its purposes and activities.

Section 6.2. These periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether activities carried on by PTI are consistent with and in furtherance of one or more of PTI's tax-exempt purposes;
- (b) Whether PTI follows policies and procedures reasonably calculated to prevent private Inurement more than incidental private benefit, excess benefit transactions, substantial lobbying, and participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office;
- (c) Whether compensation arrangements and benefits are reasonable, are based on appropriate data as to comparability, and are the result of arm's length bargaining; and
- (d) Whether partnerships, joint ventures, and arrangements with organizations that provide management personnel or management services conform to PTI's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further tax-exempt purposes, and do not result in private Inurement more than incidental private benefit, or in an excess benefit transaction.

Section 6.3. When conducting the periodic reviews, PTI may, but need not, use outside experts and/or advisors. If outside experts and/or advisors are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted in the manner prescribed in this Article.

ARTICLE VII -- DEFINITIONS

Section 7.1. As used in this COI Policy, the following terms shall have the meanings set forth below.

(a) A “Common Director Transaction” is a Duality of Interest that arises when one or more of PTI’s Directors are also directors of a party to any proposed contract or other transaction with PTI.

~~(a)~~(b) “Compensation” includes direct and indirect remuneration as well as gifts or favors that are material in nature or amount. Compensation does not include reimbursement of properly documented travel and other appropriate business expenses.

~~(b)~~(c) A “Conflict” or “Conflict of Interest” arises when the Board, following the procedures set forth in Articles II and III of this COI Policy, determines that a Covered Person has disclosed a Potential Conflict that may in the judgment of a majority of the Disinterested Directors adversely impact the Covered Person’s ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of PTI.

~~(c)~~(d) “Conflicted Person” means a Covered Person who has been determined by the Board to have a Conflict of Interest.

~~(d)~~(e) “Covered Person” shall mean an Officer, a Director or Key Employee of PTI.

~~(e)~~(f) A “Director” is any ~~voting~~ member of the Board.

~~(f)~~(g) “Disinterested” means not having a Potential Conflict with respect to a transaction, contract, arrangement, policy, program or other matter being considered by PTI.

~~(g)~~(h) “Domestic Partner” shall mean an individual who resides at the same residence as the Covered Person as his or her spousal equivalent.

~~(h)~~(i) A “Duality of Interest” arises when, with respect to a transaction, contract, arrangement, policy, program or other matter, a Covered Person or a member of a Covered Person’s Family has a fiduciary relationship with another party to a proposed transaction, contract or arrangement which gives rise to a circumstance in which the fiduciary duties of the Covered Person to PTI and the fiduciary duties of the Covered Person, or the fiduciary duties of the Family member of the Covered Person, to the other party may be in conflict. A Duality of Interest (other than a Duality of Interest that arises from a Common Director Transaction) does not constitute a Conflict of Interest if (i) PTI and all other parties to the transaction, contract or arrangement being in possession of all material facts, waive the conflict in writing or (ii) the sole source of such Duality of Interest is a Covered Person’s fiduciary relationship with ICANN. For the avoidance of doubt, a contract or other transaction may involve both a Duality of Interest and a Financial Interest.

~~(i)~~(j) The “Family” of any Covered Person shall include the Covered Person’s spouse; Domestic Partner; siblings and their spouses or Domestic Partners;

ancestors and their spouses or Domestic Partners; and descendants and their spouses or Domestic Partners. Family shall also include anyone (other than a domestic employee or service provider) who shares the Covered Person's home.

~~(k)~~ A "Financial Interest" exists whenever a Covered Person has or is engaged in discussions to have, directly or indirectly, through business, investment, or Family: (i) an ownership or investment interest in any entity with which PTI has a transaction, contract, arrangement, policy, program or other matter; (ii) a Compensation arrangement with any entity or individual with which PTI has a transaction, contract, arrangement, policy, program or other matter; and (iii) a potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which PTI is negotiating a transaction, contract, arrangement, policy, program or other matter. As used herein, "transactions, contracts, and arrangements" include grants or other donations as well as business arrangements, approvals or endorsements. ~~Additionally, as used herein "policies, programs or other matters" include, but are not limited to, the application for or the registration of top-level domains.~~ A Financial Interest is a Potential Conflict but is not necessarily a Conflict of Interest. A Financial Interest does not become a Conflict of Interest until the Board, following the procedures set forth in Articles II and III of this COI Policy, determines that the Financial Interest constitutes a Conflict of Interest. Notwithstanding the foregoing, any transaction in which a Director has a material Financial Interest shall constitute a Conflict of Interest and shall be addressed in accordance with the procedures in Section 2.4.² A Director shall not be deemed to have a Financial Interest if the source of such Financial Interest is solely based on such Director's employment with ICANN, service on ICANN's board of directors or any compensation related to such employment or service.

~~(l)~~ "ICANN" is the Internet Corporation for Assigned Names and Numbers, a California Nonprofit Public Benefit Corporation that is the sole member of PTI.

~~(m)~~ An "Interested Person" is a Covered Person who has a Potential Conflict with respect to a particular transaction, contract, arrangement, policy, program or other matter under consideration by PTI.

~~(n)~~ "Internal Revenue Code" shall mean the United States Internal Revenue Code of 1986, as amended, or any future revenue statute replacing the 1986 Code.

~~(o)~~ "Inurement," as used in this COI Policy, shall mean: (a) a transaction in which PTI provides an economic benefit, directly or indirectly, to or for the use of any Covered Person where the value of that economic benefit exceeds the value of the consideration (including the performance of services) that PTI receives in exchange; or (b) any transaction or arrangement by or through which a Covered Person receives a direct or indirect distribution of PTI's net earnings (other than

²See footnote #1.

payment of fair market value for property or the right to use property and reasonable compensation for services).

~~(e)~~(p) A “Key Employee” is an employee of PTI designated as a member of the executive management team of PTI, but who is not an Officer or Director.

~~(e)~~(q) An “Officer” is an individual holding a position designated as an Officer by PTI’s Bylaws or by resolution of the Board.

~~(e)~~(r) A “Person” includes an individual, corporation, limited liability company, partnership, trust, unincorporated association or other entity.

~~(e)~~(s) A “Potential Conflict” means either a Potential Direct Conflict or a Potential Perceived Conflict.

~~(e)~~(t) A “Potential Direct Conflict” means any one or more of the following: (i) a direct or indirect Financial Interest in a transaction, contract or arrangement being considered by PTI, by a Covered Person or a member of a Covered Person’s Family; (ii) a Duality of Interest by a Covered Person or a member of a Covered Person’s Family with respect to another party to a transaction, contract or arrangement being considered by PTI that, if permitted to be waived under Section 7.1(i), has not been waived in writing by all parties to the transaction, contract or arrangement; (iii) a Common Director Transaction; or ~~(iv)~~(ii) a close personal relationship between the Covered Person, or a member of a Covered Person’s Family, with an individual who is, directly or indirectly through business, investment, or Family, a party to a transaction, contract or arrangement being considered by PTI.

~~(e)~~(u) A “Potential Perceived Conflict” exists when a reasonable person, knowing the relevant facts, could conclude that the Covered Person’s private interests could adversely impact the Covered Person’s ability to act fairly and independently and in a manner that furthers, or is not opposed to, the best interests of PTI.

~~(e)~~(v) “Regulations” means treasury regulations promulgated under the Internal Revenue Code.

~~(e)~~(w) “Secretary” means the Secretary of PTI.

~~(e)~~(x) “Statement” means the annual statement required by Article V hereof.

~~(e)~~(y) “Treasurer” means the Treasurer of PTI.

Section 7.2. Where terms used in this COI Policy have a particular meaning under the Internal Revenue Code and/or any Regulations issued thereunder, this COI Policy shall be construed to incorporate that meaning as the context requires.

Section 7.3. All other terms used in this COI Policy shall be given their ordinary, everyday meaning.