

ICANN Community Participant Code of Conduct Concerning Statements of Interest

Context: Each participant in the Internet Corporation for Assigned Names and Numbers (ICANN) community is expected to adhere to a high standard of ethical conduct and to act in accordance with ICANN's ~~Mission, Commitments and Core Values~~. Mission, Commitments and Core Values. The legitimacy of ICANN and ~~the~~ its multistakeholder model ~~it fosters~~ depends, in large part, upon how those within the ICANN community participate in the model. Each participant contributes to a culture of trust, transparency, and mutual respect, which in turn builds confidence in the outcomes of the ICANN community's work and processes, and encourages new and broad participation. Unethical actions, or the appearance of unethical actions, are not acceptable within the ICANN community.

~~Specifically, all~~ All who participate in ICANN processes are required to disclose the interests influencing their participation.

What Interests Must Be Disclosed. The types of interests that should be disclosed are broad, and cover a variety of influences and relationships, both monetary and non-monetary. These could include: familial relationships; employment relationships; agreements to represent a specific person, entity or group of entities; vendor or contracting relationships; stock/equity ownership (other than *de minimis* ownership); and all similar types of influences and relationships that impact the discloser's participation within ICANN. Interests can be general or they can be issue-specific.

How to Make Disclosures. Disclosure ~~shall~~ must be made using the appropriate and available mechanism based upon the forum. These mechanisms include, but are not limited to:

- a) Supporting Organization (SO) and Advisory Committee (AC) Statement of Interest (Sol) ~~Processes~~ processes for participation within those entities (including working groups, task forces, etc.);
- b) Disclosure processes defined in group charters or terms of reference;
- c) Written disclosure accompanying a public comment submission, email, written interventions into a webinar chat room or similar tool, ~~(when~~ outside of a working group/task force/other ~~groups~~ group already subject to Sol processes); and
- d) Verbal disclosure accompanying spoken interventions during ICANN public forums, webinars, sessions at ICANN meetings, or any other session that is not already subject to an SOI process.

Recognizing that interests impacting a single participant may differ depending on the forum, SOs and ACs are encouraged to consider processes that allow ease of reference to a participant's general statement of interest as well as to any specific

statement of interest a participant might submit within a specific forum. For any mechanism that requires the maintenance of an up-to-date written statement of interest, there shall be deadlines specified to guide the timeliness of submitting or updating a statement of interest.

When Disclosure of Interest Cannot Be Made. There will be limited situations, such as certain attorney/client relationships, where the participant might hold professional duties or ethical obligations that preclude the identification of a representational interest for a period of time. There ~~may~~might also be situations where, for example, a participant knows that the outcome of a policy decision ~~might~~could impact a confidential initiative at their company in a unique way, such as implementing a required method of operation for which the company is seeking a patent that is not yet public. In these and similar situations, withholding relevant information about the interests involved in the deliberations could impair the legitimacy of ICANN's processes. When disclosure cannot be made, the participant must not participate in ICANN processes or make interventions at ICANN sessions on that issue.

Enforcement: Compliance with this Code is, first and foremost, a matter of personal responsibility for each individual ICANN community participant. An ICANN community member who participates within ICANN processes without full and proper disclosure of interests may be subject to a range of consequences, up to and including a prohibition from future participation within ICANN. The chairs and leadership of ICANN's SOs, ACs, Constituencies, Working Groups, Task Forces, Review Teams, and other similar groups, already maintain primary responsibility for enforcing the appropriate standards of participation and preparation within the groups they lead, and this Participant Code of Conduct shall be incorporated. Complaints of alleged violations of this Code are to be made first to the relevant chair of leadership of the group or session within which the violation is alleged to have occurred. All complaints ~~of alleged violations~~ of submitted under this Code ~~shall~~must be accompanied by an explanation of the basis of the allegations.

The ICANN Ombuds maintains no specific role or right of investigation under this Code of Conduct. However, the ICANN Ombuds remains available for any claims of unfairness within the ICANN community as contemplated by the ICANN Bylaws and the ~~Ombudsman Framework~~Ombudsman Framework, such as any claims of unfairness related to the enforcement of this Code or the ICANN Expected Standards of Behavior.

ENFORCEMENT GUIDANCE FOR ICANN COMMUNITY PARTICIPANT CODE OF CONDUCT CONCERNING STATEMENTS OF INTEREST

The Code of Conduct Concerning Statements of Interest (Code) guides participation across the ICANN community, including within policy development processes, working groups, task forces, coordination groups, discussion groups, meeting sessions, webinars, public comment proceedings, public comment, email lists, and other sessions and groupings where participants within ICANN come together to work and share ideas. This Code is intended to focus participants in the ICANN community on transparency and ethical conduct; provide guidance to help ICANN participants recognize and deal with ethical issues they may face when contributing to the ICANN community; provide mechanisms for reporting unethical conduct; foster a culture of honesty, transparency, preparedness, and accountability; deter wrongdoing; and promote fair and accurate disclosure. The Code is not intended to override any obligations pursuant to ICANN's ~~Bylaws~~, Bylaws, the ~~Expected Standards of Behavior~~, Expected Standards of Behavior, the ~~Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure~~, Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, or any other applicable ICANN policies.

~~No code can anticipate every situation that may arise.~~ The following guiding principles may be of assistance to support in supporting all ICANN participants in ICANN acting to act in an ethical manner.

1. ***Interests and Experience Bring Value.*** Participants in the ICANN community bring a wide variety of experience and views to ICANN processes. Participants also, at times, represent the views of others, such as an employer, an organization with which they are aligned, a trade association, a client, an interest group, a stakeholder group or constituency, or other representative relationship. Also ~~at times~~, participants might at times be advancing a purely personal perspective. The multistakeholder model thrives when a diverse variety of interests and experience inform debate and deliberation.
2. ***Informed Participation.*** Informed participation has many facets, including staying abreast of deliberations and attending meetings and working sessions with appropriate preparation. Informed participation also requires making sufficient disclosures such that other participants are informed and aware of the interests and representations that other participants bring to influence ICANN community deliberations. Disclosures must be made at the appropriate times, often in advance of meetings and working sessions, to allow other participants to be well and appropriately informed.
3. ***Statements of Interest.*** To remain accountable to others across the ICANN community, all community participants are expected to maintain up-to-date Statements of Interest as required within the groups in which they are

participating. Participants are encouraged to identify on those Statements of Interests all personal, professional, financial and representational interests ~~on those Statements of Interest~~. ~~If participants are participating on behalf of a trade association, consortium, or similar organization, those participants are urged to identify where other participants within ICANN can locate pertinent information about the membership or funding of that organization.~~

4. ***Disclosures of Additional Interests.*** There may be situations where a participant might not be able to maintain a singular blanket Statement of Interest. For example, ~~when a participant represents~~ could represent a particular client in relation to one issue, ~~but for a different issue, the participant is there on behalf of~~ while also representing a second client or group on a separate issue. Similarly, a participant might have a unique financial interest in one area of policy work that might not be present in other policy work. Participants are encouraged, when making spoken or written interventions, to clearly identify the interests at hand for the purpose of that intervention or issue. This disclosure allows other participants to clearly understand the viewpoints and motivations underlying the intervention. This also allows the ICANN Board members, when considering the resulting recommendations, advice or outputs, to understand the scope of community participation and evaluate whether any of the interests present and influencing the ICANN community discussions might give rise to any actual, potential, or perceived conflicts of interest for Board members.
5. ***Personal and Collective Responsibility.*** The obligation to fully disclose interests lies primarily with each individual participant. If an entity maintains engagements with multiple ICANN participants, including for the purpose of participating in different groups or on different issues across the ICANN community, that entity is strongly encouraged to confirm that each of ~~their~~ its representatives are making full and proper disclosure. Regular consulting relationships or other engagements typically are not duty-bound to be maintained as confidential, and participants and their clients should not use contractual confidentiality terms in ways that shield the release of information about representation within ICANN processes.
6. ***Impact of Failures to Disclose.*** Because ICANN participants are expected to bring ~~their~~ a variety of interests to the multistakeholder processes, there are many situations where personal, financial, organizational, or professional interests in the matter under discussion are expected to be present. In most situations, ~~so as~~ as long as the interests are properly disclosed, conflict of interest concerns are not present. Statements of Interest are intended to support broad and informed participation, as opposed to having the effect of excluding people from participation in ICANN community processes.

However, failure to properly disclose interests that materially impact the deliberations within the ICANN community, or are likely to materially impact

those deliberations and processes, could represent an ethical lapse that deprives all other participants from relevant information. Failure to disclose those interests also could result in depriving ICANN (including the ICANN Board of Directors) of necessary or proper information from which to assess that its decisions are free from conflicts of interest or the appearance thereof. Nothing in this Code should be considered as limiting a participant's duties, or obligations with which ICANN participants are expected to comply.

- 7. Leadership Empowerment to Enforce.** If there is conduct that appears to be in violation of this ICANN Participant Code of Conduct, any individual serving in a Chair role has the power to remove the violator from the discussion for a short period of time. A temporary removal could include removing the ability to participate in meetings/chats, relevant mailing lists, and other communication channels officially used for the group's activities. For conduct that is questionable, but not necessarily a violation, the Chair might wish to only make a record of warnings, but not escalate to removal. These are all actions within the judgment of the Chair. ICANN reaffirms and incorporates herein the commitments made in 2019 to stand behind community enforcement efforts.

DISCUSSION AND EXAMPLES TO SUPPORT TRAINING, COMPLIANCE, AND ENFORCEMENT

The ICANN Community requested examples to help guide understanding of the breadth of issues and interests expected to be covered through the Statement of Interest process to facilitate participation in ICANN. This list can be expanded and is not meant to be exhaustive. The ICANN Participation Code of Conduct Concerning Statements of Interest (Code) focuses on participation – not on monitoring ICANN work or simple attendance at an ICANN webinar or a Public Meeting. There is a wealth of information available on ICANN processes, such as open mailing lists, open meetings, recordings of past meetings, and public comment archives. No Statements of Interest are needed to access publicly available information. However, when someone moves from attendance to participation, from monitoring to speaking or joining working groups, those are examples of moments when a person moves into a participant role and has an obligation to make a complete Statement of Interest.

Baseline Disclosures

Statement of Interest processes have existed within ICANN for years. The GNSO Statement of Interest questions currently include: (1) Name; (2) Stakeholder Group; (3) Constituency; (4) ICANN Affiliation (if not covered by item 2 or 3); (5) Current Employer; (6) Current Position(s); (7) Type of Work; (8) Country of Primary Residence; (9) Any financial relationship beyond *de minimis* stock ownership you may have with any company that to your knowledge has a financial relationship or contract with ICANN; (10) Identification of whether participation is as a representative of any individual or entity, whether paid or unpaid; (11) Other relevant “arrangements, interests or benefits” including “any type of material interest in ICANN GNSO policy development processes and outcomes: and “arrangements/agreements between you and any other group, constituency, or person(s) regarding your participation as a work team member”; and (12) Any Working Groups or other chartered teams in which you are participating. This is likely a strong starting point for all participants – whether or not they have further representational interests to declare – and this ICANN Code informs how participants can be more comprehensive in their disclosures even to these existing questions.

How to Declare Interests When a Form Is Not Required

There are many times where a person or entity can participate within ICANN without having previously submitted a written Statement of Interest. For example, anyone can submit a public comment, or can come up to the microphone at an ICANN Public Forum. In those cases the participant is urged to state their name, affiliation, and who they represent (if anyone) at the beginning of their written remarks or interventions.

Examples of Particular Types of Participant Interests and Issues

Below are some of the common types of participants and issues, with suggestions about the types of disclosures that might be appropriate for inclusion within a Statement of Interest for each of those situations.

Intellectual Property/Patent Issues: At times, a person or entity might control, hold, or be applying for a patent that is related to an issue for which a policy development process is underway, and the outcome of the PDP could impact the scope or applicability of the patent. If that person or entity intends to participate in any part of the development or implementation support of that policy, they or the ICANN participant representing that person or entity must make disclosure of the relevant patent claim. If that disclosure cannot be made, the person or entity shall make sure that no one representing that person or entity participates within ICANN processes on that issue. Some examples of the work efforts supporting policy development where the existence of current or future patent rights might be relevant include: PDP working groups; Stakeholder Group discussions on setting a policy position; SO or AC advice development work; the GNSO Council's deliberations on initiation of the PDP or approval of the PDP Recommendations; and Implementation Review Team deliberations.

Researchers: The ICANN community includes many academics and researchers participating within ICANN processes. If the participant is a researcher, and their work within ICANN processes supports or advances their research, the fact of such research should be disclosed, as well as the funding source for that research.

Participation As Appointed SO/AC Representative: In many processes, ICANN's SOs/ACs/Stakeholder Groups/Constituencies/RALOs appoint representatives to participate within that forum on behalf of the group. If that participant is only there on behalf of the appointing entity, that fact would be the expected scope of disclosure on the topic. When participating on behalf of an established SO/AC/Stakeholder Group/Constituency/RALO, there is no need for the participant to also identify within their Statement of Interest all persons or entities that are members of or represented through that SO/AC/Stakeholder Group/Constituency/RALO.

Trade Organization, Consortium, or Similar Organization: When a participant is participating on behalf of a trade organization, consortium, or similar organization, that participant is expected to include in their disclosures sufficient information to make available to other participants a list of the entities that are represented through that trade organization as well as information on the funding of the organization. The representative generally does not have to make available the list of individual people who are members of that trade organization.

If a subset of the group's members (entities and/or individuals) are specifically impacting or funding that trade organization, consortium or similar organization's participation within an ICANN process, the representative should identify within their Statement of Interest such entities and/or individuals. While in general there is no need to disclose individual members, if there are circumstances that suggest that an individual or group of individuals are participating in ICANN through a trade organization, consortium, or similar organization, and with the intent to obscure such

individual interest(s) in and to achieve impact on the outcomes of an ICANN process, such an issue can be raised to leadership for consideration for enforcement under this Code.

Governmental Representatives: Governmental representatives participating within ICANN processes only on behalf of their government and not on behalf of any other person or entity, only need to identify that fact in disclosure on that topic. There is no need for the governmental representative to identify within their ICANN Statement of Interest all persons or entities that are constituents of or who have lobbied the respective government on that issue, though there would likely be other governmental transparency initiatives that might apply outside of ICANN.

Domain Name Industry Service Providers and Consultants: ICANN has a number of participants who work within the domain name industry. Some of these participants are employed by registry operators, registrars and ccTLD managers and participate only in that role. Some entities are in more than one line of business, for example, a ccTLD manager as well as a gTLD Registry Service Provider, or a registrar and a consultant on other domain name industry work. Others might be service providers or consultants, without other affiliation. No matter the combination of roles, each role the participant serves in must be disclosed, including the clients for which they are doing business within ICANN. A gTLD registry operator, for example, might ask its Registry Service Provider or consultant to participate within ICANN on a specific issue even though the registry operator has an employee already representing it on that same issue. The other participants within the ICANN processes should have sufficient information to understand that there are multiple representatives for that registry operator participating in a process.

Attorneys: Many entities choose to participate in ICANN through legal counsel. Just as entities can be represented through other employees or agents, attorneys are welcome within the ICANN community. Some attorneys come to ICANN because of their own personal or professional interests and not in any representative role, similar to many other people across the ICANN community. When an attorney is engaged to participate in ICANN on behalf of a client, while that attorney holds specific duties to their client, those duties do not override the need for others participating within ICANN to understand what other interests are advocating and participating within ICANN processes.

An attorney representing a client on ICANN matters enjoys full access to all public proceedings within ICANN, including publicly archived mailing lists, webinars, meeting sessions with general invites, ICANN public meetings, etc. There is no need for disclosure of representation for an attorney to solely monitor activities within ICANN. However, when that attorney starts participating within processes, such as participating in mailing lists, making public comments, joining working groups, etc., on behalf of that client, the client's and attorney's obligations to the broader ICANN community emerge. At that time, the attorney must provide an updated statement of

interest that identifies on whose behalf they are participating in ICANN processes.
Failure to disclose that advocacy role could also impact others in the ICANN sphere
from evaluating when they too might need their attorney on an issue.