
Public Comment Summary Report

ICANN Community Participant Code of Conduct on SOIs and General Ethics Policy

Open for Submissions Date:

Wednesday, 16 October 2024

Closed for Submissions Date:

Monday, 02 December 2024

Summary Report Due Date:

Tuesday, 04 March 2025 (extended from Thursday, 19 December 2024)

Category: Governance

Requester: ICANN org

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Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/icann-community-participant-code-of-conduct-on-sois-and-general-ethics-policy-16-10-2024>

Outcome:

ICANN organization (org) received fifteen submissions providing input on the draft ICANN Community Participant Code of Conduct Concerning Statements of Interests (“Code”), which is intended to support ethical practices of disclosures when participating across the ICANN community. Many commenters expressed support for the draft Code, which would be the first step towards addressing the ICANN community’s requests to better guide ethical and transparent participation within the ICANN community. Even among those in favor of the Code, commenters requested more clarity around how the Code will be enforced uniformly across the ICANN community and stressed the importance of training after the Code is adopted. A few commenters expressed objection to the draft Code, disagreeing that there was a documented need for a Code that requires disclosure of interests as a condition for participating in ICANN processes. Those objecting to the Code stressed their beliefs that the proposed requirements under the Code are unworkable and unenforceable, and that the requirements may violate ICANN Bylaws.

ICANN will review the input received and will facilitate a dialogue among the community, particularly focusing on how enforcement paths can be better defined within an updated version of the Code. Once adopted, the Code will become part of the ICANN Community Ethics Policy.

Section 1: What We Received Input On

ICANN sought community input on the draft Code, including the Enforcement Guidance set forth within the Code. The Code is the first step in addressing ICANN community requests to better guide ethical and transparent participation within the ICANN community. The draft Code embraces the reality that ICANN's multistakeholder model is vibrant because of the variety of interests that are present within community deliberations, while expressing an expectation that those interests are clearly and fully disclosed among participants.

ICANN also provided an explanation of how the Code will become part of an ICANN Community Ethics Policy, which is a collection of documents that includes the Expected Standards of Behavior and the Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure, which already guide behavior within and among the ICANN community.

The following questions were posed to aid responders in formulating their views:

- Does the ICANN Community Participant Code of Conduct Concerning Statements of Interest adequately address the issue of setting clear expectations for community disclosures of interests?
- Are there items you believe are missing from the Code or that should be removed from the Code, and why?
- Are there other ethical issues you wish to see addressed as part of the broader ICANN Community Ethics Policy?

Section 2: Submissions

Organizations and Groups:

Name	Submitted by	Initials
Public Interest Registry	Elizabeth Bacon	PIR
Identity Digital Inc.	Catherine Paletta	ID
Registries Stakeholder Group	N/A	RySG
Business Constituency	N/A	BC
Tucows	Sarah Wyld	Tucows
At-Large Advisory Committee	ICANN Policy Staff in support of the At-Large Community	ALAC
Registrar Stakeholder Group	Zoe Bonython	RrSG
Government Advisory Committee	Benedetta Rossi	GAC
GoDaddy	Ashley Heineman	GoDaddy
International Trademark Association	Lori Schulman	INTA
Intellectual Property Constituency	Patrick Flaherty	IPC

Individuals:

Name	Affiliation (if provided)	Initials
Felix Opilli	AFRALO	FO
James Kunle Olorundare	/	JKO

Section 2a: Late Submissions

At its discretion, ICANN org accepted late submissions, which have been appended to this summary report.

Organizations and Groups:

Name	Submitted by	Initials
Non-commercial Stakeholder Group	Mesumbe Tomslin Samme-Nlar	NCSG
Internet Infrastructure Coalition	Christian Dawson	i2Coalition

Section 3: Summary of Submissions

The submissions revealed that a majority of the commenters support the language of the draft Code, indicating that the draft Code aligns well with their expectations on the needs of the ICANN community. Many commenters proposed additional enhancements and recommendations to refine the Code, particularly focusing on issues of enforcement. Some commenters expressed that they do not support some or all of the Code.

PIR noted its support and appreciation of the Code, stating that it closes a loophole in participation and brings ICANN into alignment with international standards.

FO supports the Code and suggested that specific examples could make it better understood, such as describing how to disclose funding sources or affiliations. FO made some recommendations for additions, including asking for more details on how to evaluate and treat community member conflicts of interest, and providing more information on enforcement, including the possibility of tiered enforcement and providing training. FO also noted that requiring disclosures of commitment to DEI initiatives would support other goals within ICANN.

ID noted its support for the Code and that it brings ICANN in line with international norms. ID requested a review of the effectiveness of the Code after one year.

JO noted some concerns with the Code as drafted, that it could increase bureaucracy and decrease participation in groups like the Business Constituency and could shift the community focus to process and away from substantive conversation. JO suggested that guidelines for disclosure should be more clear and practical, and that effective enforcement could be designed through community engagement.

The RySG commented that the draft Code brings ICANN in line with other policy making bodies like the OECD, and appreciated the community-wide focus. The RySG suggested that periodic reviews are needed.

The BC noted that while it supports the goal of the Code, it has ideas for enhancement, including the use of shorter, clearer statements. The BC also reflected on the disclosure requirements, noting that disclosure should not be required when it would impact trade secrets, proprietary information or business strategy. The BC encourages the ICANN community to not value comments based on the speaker's motivation. The BC suggests that an exception should be made available across ICANN processes, to allow participation while still protecting sensitive business information. The BC noted its concern that the Code as written could require breaking of attorney-client privilege and may conflict with existing laws and regulations on business operations, leading to regulatory compliance issues for participants. The BC urged that there needs to be clear enforcement lines established. The BC also noted that for the general Ethics policy, these should be structured so that the participants can describe that they have a particular interest without being required to name clients. This should be part of a comprehensive framework that is regularly reviewed, with training and resources available to the community.

Tucows commented that it supports the Code, but that clarity is needed on enforcement, particularly in situations where the person responsible for enforcement, such as the Chair of a

group, is unwilling to address the issue. Tucows noted its support for ID's suggestion of a one-year review.

ALAC commented that enhanced specificity is needed regarding the form of required disclosures, and asked also for examples and for enhanced discussion of remedies. The ALAC also identified areas for proposed additions, including requiring disclosure of financial interests and affiliations for the prior two years, as well as family interests, recognizing that there could be dollar amount limitations on disclosures. The ALAC also seeks the imposition of timing requirements for updating disclosures, as well as information on how records would be maintained and accessed. Regarding other ethical concerns, the ALAC suggested disclosure of gifts or other benefits, as well as imposition of standards for social media. They also encouraged consideration of transparency of engagement in more than one group within ICANN, as well as providing whistleblowing protections for those reporting infractions.

The RrSG supports the conclusion that participants that cannot disclose their interests are not to participate, but notes that there's a need to better address enforcement of the code beyond a singular group. The RrSG noted its concern that a Chair might not address the issue, or it could be that the Chair themselves is the subject of concern a concern. The RrSG urged ICANN to consider providing training on the Code.

The GAC noted that its position that it is inconsistent with the ICANN Bylaws if participants are not being transparent in participation, and that the proposal is in the right direction. The GAC asked for more information on enforcement and consequences and urged that there be reviews once data is available regarding adherence with the Code.

GoDaddy commented that the draft is an advancement, but additional detail is needed to develop effective enforcement mechanisms. GoDaddy noted its support for the GAC's comments on enforcement and the points raised by the RrSG.

INTA expressed support for ethical participation in ICANN but noted that it does not support the Code, and suggests that clearer justification is needed for the Code. INTA's comments focus significantly on how the Code might impact attorneys and their clients, suggesting that it singles out attorneys and conflicts with professional ethics obligations, such as the right of clients to remain anonymous. INTA also raised a concern that adherence to the Code could force INTA to disclose its membership. Because ICANN is not a court, INTA stated that there is no duty for attorneys to disclose their clients. INTA urges ICANN, after establishing better documentation to justify why this is needed, to produce a code to "international law and norms."

The IPC confirmed that it is not in favor of the Code as the IPC suggests that the Code is not enforceable and itself violates the ICANN Bylaws, and does not identify the problem it is trying to solve. The IPC suggested that the Code would require GAC members to disclose all lobbying entities from each specific member country, and would force each ALAC member to identify specific end users in violation of privacy laws. The IPC posited that entities have human rights to representation by counsel, and if disclosure is required, then entities are deprived of that human right. Instead, the client should have the ability to elect whether they wish to have their identity disclosed. Further, the IPC stated that requiring disclosure is not compliant with applicable laws that allow for privilege between attorney and client, and it impacts competition for new or anticipated market entrants that elect to participate in ICANN through legal representatives. The IPC suggested that more specificity is needed in the language of the Code, and that concepts such as requirements of disclosure of representation removes expertise and

the ability for a client to have competent representation. The IPC noted its position that comparison to governmental lobbying disclosure requirements is inapposite. In summary, the IPC recognized the good intent behind the draft, but finds the draft unworkable, and noted its willingness to work with the ICANN community to strengthen ethical guidelines that the IPC would find appropriate, compliant and meaningful.

The i2Coalition expressed support for the Code, noting that it sets out clear expectations for disclosure of interest and preserves trust and integrity in community deliberations. The i2Coalition noted that enforcement will need to be applied consistently and fairly to maintain confidence in the MSM. The i2Coalition also noted the need to address broader ethical issues. The i2Coalition called for ICANN to invest in training and educational opportunity to increase awareness of the Code and urged ICANN to conduct periodic reviews of the Code and the broader ethics policy.

The NCSC noted its support for the Code, stating “[i]t is something we badly need”, and confirmed its position that the current draft covers the important issues.

Section 4: Analysis of Submissions

Out of the total fifteen submissions, 13 were from organizations or groups and two were individuals. Of the 13 submissions from organizations, two were from Advisory Committees, three from Stakeholder Groups of the GNSO, two from GNSO Constituencies, and the remaining are from PIR, Tucows, INTA, GoDaddy, ID and i2Coalition.

Multiple commenters expressed support for the Code. Even among those supportive of the Code, many identified opportunities for improvement, which included:

- Expansion on enforcement mechanisms, including clarity on enforcement, the scope of empowerment of those charged with enforcement, and escalation paths (including when a chair refuses to enforce or is themselves alleged to be in violation of the disclosure obligation);
- Consideration of other areas for disclosure, such as financial and familial interests;
- Training and educational opportunities to make sure that the Code is broadly and uniformly understood;
- Use of examples to help support understanding of the Code;
- Making sure the Code is aligned with other behavioral expectations within ICANN, including alignment with Expected Standards of Behavior; and
- Conducting a timely review of the effectiveness of the Code.

Four commenters (IPC, INTA, BC and JO) expressed opposition to some or all of the Code, while each noting a willingness to explore areas of potential refinement. These areas of opposition included:

- Risk of inconsistent application;
- Focusing the community on the procedural bureaucracy as opposed to substantive work;
- Risk of disclosure of trade secrets or sensitive business strategy;
- Concerns of violation of laws and ethical violations, particularly for attorneys; and
- Lack of sufficient justification to introduce such disclosure requirements.

Section 5: Next Steps

ICANN org will review the input received, and will address any necessary updates to the draft Code. In addition to this Public Comment summary report of submissions, broad community engagement and dialogue to refine the Code essential before the Code (amended as needed) can be adopted. This includes clarity on paths of enforcement and remedies. Once adopted, the ICANN Participant Code of Conduct Concerning Statements of Interest will become part of the ICANN Community Ethics Policy. When the ICANN community identifies future areas where clarity can be offered or improvements can be made, those will be discussed as other facets of the ICANN Community Ethics Policy, without disturbing the practices that are already working well.

ICANN Community Participant Code of Conduct on SOIs and General Ethics Policy

NCSG Comments

December 3, 2024

About NCSG

NCSG represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

Our Comment

Question: Does the ICANN Community Participant Code of Conduct Concerning Statements of Interest adequately address the issue of setting clear expectations for community disclosures of interests?

NCSG Response: It is something we badly need and NCSG supports it.

Question: Are there items you believe are missing from the Code or that should be removed from the Code, and why?

NCSG Response: For now, this covers important issues and fills in critical gaps.

Question: Are there other ethical issues you wish to see addressed as part of the broader ICANN Community Ethics Policy?

NCSG Response: We have nothing further to offer at this time, and we look forward to reviewing the suggestions of others, including on enforcement, in this comment proceeding.



Comments from the Internet Infrastructure Coalition (i2Coalition)

On the Draft ICANN Community Participant Code of Conduct Concerning Statements of Interest

The Internet Infrastructure Coalition (i2Coalition) appreciates the opportunity to provide comments on the draft ICANN Community Participant Code of Conduct Concerning Statements of Interest (the “Code”).

The i2Coalition represents a diverse group of Internet infrastructure providers, including web hosting companies, data centers, registrars, registries, and software service providers. We are committed to fostering ethical, transparent, and inclusive participation within the ICANN multistakeholder model. As such, we are supportive of the initiatives set forth in the draft Code and commend ICANN for addressing community requests to clarify expectations for ethical and transparent participation. It is important that ICANN, as a global policymaking body, meet or exceed internationally recognized standards for transparency in policymaking. This Code is an important step in meeting these standards.

General Comments:

The i2Coalition acknowledges the critical role transparency and accountability play in ensuring the success of ICANN’s multistakeholder processes. We applaud ICANN for recognizing that the diversity of interests within its community is a strength and for establishing mechanisms to ensure those interests are disclosed in a clear and consistent manner.

We are particularly supportive of the inclusion of the draft Code as a foundational element of a broader ICANN Community Ethics Policy. Integrating this Code with the Expected Standards of Behavior, the Community Anti-Harassment Policy, and other guiding documents demonstrates a thoughtful approach to creating a cohesive framework for ethical participation.

Specific comments:

1. Clear Expectations for Disclosures

The draft Code effectively sets clear expectations for community disclosures of interests. It aligns with the values of transparency and fairness that underpin ICANN’s multistakeholder

model. By emphasizing the importance of full and accurate disclosure, the Code helps to preserve trust and integrity within community deliberations.

2. **Enforcement Guidance**

The proposed Enforcement Guidance is a welcome addition, as it provides clarity on how the Code will be implemented and enforced. We encourage ICANN to ensure that enforcement mechanisms are applied consistently and fairly across all community participants. This will help maintain confidence in the process and uphold the credibility of the multistakeholder model.

3. **Ethical Issues Beyond Disclosures**

While the draft Code is focused on statements of interest, we recognize the opportunity to address broader ethical issues within the context of the ICANN Community Ethics Policy. For example, continued emphasis on anti-harassment measures, inclusion, and equitable participation is essential for fostering a collaborative and respectful community.

Recommendations:

1. **Education and Awareness**

To ensure the successful adoption and implementation of the Code, ICANN should invest in community education and awareness initiatives. This could include workshops, webinars, or other training programs to familiarize community members with the requirements and expectations outlined in the Code.

2. **Periodic Reviews**

To adapt to the evolving needs of the community, we recommend that ICANN conduct periodic reviews of the Code and the broader Ethics Policy. Gathering feedback from community members on the effectiveness of these documents will help ensure they remain relevant and impactful.

Concluding Comments

The i2Coalition is supportive of ICANN's efforts to strengthen ethical and transparent participation within the ICANN community. The draft ICANN Community Participant Code of Conduct Concerning Statements of Interest is an important step forward, and we commend ICANN for its commitment to fostering trust, accountability, and inclusivity in its multistakeholder processes.

We look forward to supporting ICANN in the implementation of this Code and in the continued development of its Community Ethics Policy.

Thank you for the opportunity to comment.

All the best,

Christian Dawson

Executive Director

Internet Infrastructure Coalition (i2Coalition)