

**Public Interest Registry Comments to the Proposed Updates to the GNSO Operating
Procedures Public Comment Period
10 November 2022**

Public Interest Registry (PIR) appreciates the opportunity to comment on the Proposed Updates to the GNSO Operating Procedures which includes recommendations from the GNSO Statement of Interest (SOI) Task Force.

The strength of the multistakeholder model is built on the contributions of many, and varied, subject matter experts. These experts contribute their knowledge and experience to the ICANN Community to support the tenets of the multistakeholder model, including a firm commitment to transparency. However, a challenge often arises when participants in the multistakeholder process are unsure what positions or parties individuals are representing. PIR believes in a dedication to transparency as fundamental to the strength and continued effectiveness of the multistakeholder model.

Transparency and accountability are embedded in ICANN's core values. Indeed, ICANN's Bylaws mandate that "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner ...".

PIR supports the updates to the [GNSO Operating Procedures](#) to include both the General SOI, "A written statement made by a Relevant Party that provides general information about a participant to understand their background and motivation for participating in GNSO activities." and the Activity Specific SOI, "A written statement made by a Relevant Party that provides a declaration of interests that may affect the Relevant Party's judgment, on matters to be considered by a specific GNSO Group."

However, while the proposed [GNSO Operating Procedure](#) updates to the SOI definitions, as recommended by the [GNSO Statement of Interest \(SOI\) Task Force](#), are a step in the right direction to increasing transparency, they don't go far enough. Unfortunately, due to an exception in the application of the proposal in the [Sample Statement of Interest](#) form, there is no real requirement that individuals disclose the identity or identities of who they represent in ICANN policymaking processes.

For there to be meaningful transparency in ICANN policymaking, participants must disclose the identities of their clients or the employers they represent as a condition to participating, without exception. And this should be inclusive of all parties. For example, if Party A retains Party B to participate in an ICANN process and Party B retains Party C to do the work, Party C needs to disclose both Party A and Party B (not just the direct employer, Party B). This disclosure requirement should apply regardless of the level of compensation involved, if any. Much like any party lobbying a policymaking body or government, it's hard to argue that a process is transparent if you do not know who you are negotiating against.

The new definitions proposed by the Task Force require a person participating in the Policy Development Process (PDP) as a paid or unpaid representative of another party to disclose who they are representing. This sounds great, however, while the proposed edits to the GNSO Operating Procedures reflect the amended definition for a “General Statement of Interest” and new “Activity Specific Statement of Interest” there remains an enormous loophole in the application of the recommendation in the [Sample Statement of Interest](#) that renders that recommendation close to meaningless. In the proposed [Sample Statement of Interest](#) form the loophole reads:

“If professional ethical obligations prevent you from disclosing this information, please provide details on which ethical obligations prevent you from disclosing and provide a high level description of the entity that you are representing without disclosing its name, for example ‘I represent a Registry client’ or ‘I am representing a non-GNSO related entity.’”

This exception would swallow the rule as a mere claim of attorney-client privilege or an ‘ethical’ obligation placed into a consulting contract would prevent this important disclosure and block the GNSO from achieving the transparency that should be fundamental to the multistakeholder policy development process and required in ICANN’s Bylaws.

To be clear, there have been a number of very productive members of the Community over the years that have been active participants in the GNSO process without disclosing who they represent. Indeed, these participants have done nothing wrong; they simply operated within the rules in place and did not disclose more than they had to. But it’s time to re-think those rules which have permitted non-disclosure and instead seek to bolster ICANN’s transparency standards in order to live up to ICANN’s Bylaws and international policymaking norms.

The level of transparency proposed by the GNSO changes, save the aforementioned loophole, is not unique to ICANN. Other trusted international policymaking organizations with similarly global participants have worked to enshrine their commitment to transparency into their operations. The [Organisation for Economic Co-operation and Development \(OECD\)](#) has noted consultants representing others’ interests or lobbyists involved in the policymaking process can “lead to undue influence, unfair competition and regulatory capture to the detriment of the public interest and effective public policies.” In order to “safeguard the integrity of the public decision-making process,” the OECD seeks “a sound framework for transparency” that requires disclosure of clients for those engaged in the public policy process.

This principle is further reflected in policy making bodies around the world. Just last year, the [European Parliament adopted](#) a “Transparency Register,” recognizing that “citizens should have the greatest possible trust in the Union’s institutions” and “that trust, in order to exist, needs to be underpinned by a perception that interest representation is bound by high ethical standards.”

This is also consistent with [U.S. Federal requirements](#) that organizations and lobbyists disclose on behalf of which clients they seek to influence the lawmaking process at the United States Congress.

The common theme in each of these disclosure requirements is that for there to be fairness and increased trust in the results of policymaking, transparency must be the foundation of those processes. And if parties don't disclose for whom they represent—all the way to the source—up the chain, they should not be able to participate.

The loophole in Activity Specific SOI as applied in the [Sample Statement of Interest](#) form assumes, incorrectly, that there is some professional/ethical obligation that is somehow stronger than the normative OECD/EU/U.S. disclosure regimes.¹ Common sense dictates that requiring disclosure in order to participate in an ICANN process wouldn't violate a privilege any more than would similar requirements in the U.S. Congress or at the EU. For that matter, any arguments of attorney-client privilege are a red herring, as it ignores the fact that, at least [under U.S. law](#), client identities are generally not even considered covered by the privilege.

We reiterate that there have been and are a number of very productive and helpful members of the ICANN community and GNSO processes who have offered their expertise without disclosing who they represent who have been in complete alignment with current SOI rules and have in no way done anything inappropriate.

This comment, and, we think, the goal of the GNSO SOI Task Force, however embraces an opportunity to further improve ICANN's transparency to align with the trusted role it plays in Internet policymaking. We encourage the GNSO to consider strong enforcement of the disclosure principle captured in the Activity Specific SOI. As ICANN continues to tackle important issues facing the Internet ecosystem, increased transparency across the community will bolster the trust in the results of the multistakeholder process. Now is the time to truly improve these transparency rules in order to live up to ICANN's Bylaws and ICANN's peers in international policymaking best practices.

¹ Under [U.S. law](#), client identities are generally not considered covered by the Attorney-Client privilege.