

GNSO Operating Procedures

Proposed Revisions to Section 5.0 Provided by the
GNSO Council Operations Work Team
For Consideration by the Operations Steering Committee (OSC)
15 October 2010

5.0 Statements and Disclosures of Interest

5.1 Definitions

Generic Names Supporting Organization (GNSO) Group:

- a. the GNSO Council, or
- b. a work team, working group, committee or other such policy development body formed by and under the supervision of the GNSO Council.

Relevant Party: An individual who participates as a member of a GNSO Group.

Statement of Interest: Relevant to membership of the GNSO Group. A written statement made by a Relevant Party that provides a declaration of direct and indirect interests that may affect, or be perceived to affect, the Relevant Party's judgment, on any matters to be considered by the GNSO Group.

Disclosure of Interest: Relevant to a specific issue at a specific time. A statement made by a Relevant Party of direct and indirect interests that may be commercial (e.g. monetary payment) or non-commercial (e.g. non-tangible benefit such as publicity, political or academic visibility) and may affect, or be perceived to affect, the Relevant Party's judgment on a specific issue.

Comment: The purpose of this edit is to clarify that Disclosures of Interest are to be written only to the extent the relevant party updates their the written Statement of Interest "relevant to a specific issue at a specific time" as applicable.

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5.2 Policy

5.2.1 Purpose

The purpose of this policy is to set forth responsibilities and procedures pertaining to the content, creation, timely update, accuracy, completeness, and compliance of Statements of Interest and Disclosures of Interest as defined in Paragraph 5.1.

5.2.2 Compliance

- a. Each Relevant Party is responsible for ensuring that he or she complies with this policy. Failure to comply with these procedures is covered in Paragraph 5.6.

This policy is administered by ICANN staff. Administration includes informing new members of groups of the policies, posting all Statements of Interest and Disclosures of Interest, and following up on any requests from the Chairs of groups pertaining to this procedure.

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5.2.3 Exemptions

ICANN staff members are exempt from the individual responsibility of completing a Statement of Interest by virtue of ICANN posting a global Statement of Interest confirming that all employees and those who have an exclusive contract with ICANN are representing the interests of ICANN, and no others, at all times. Individual staff members are nonetheless obligated to make a verbal Declaration of Interest (DOI) in the same manner as all other Relevant Parties as and when any interests they may have as individuals arise.

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Comment: This section has been added to clarify that while ICANN staff involvement may be that of a "relevant party" as defined, the requirement per the rules that all relevant parties complete a written SOI is redundant for ICANN staff personnel upon ICANN meeting the condition of "posting a global Statement of Interest" to cover all employees as described.

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5.3 Statement of Interest Procedures

5.3.1 Timeliness

Relevant Parties are required to provide to the GNSO Secretariat a Statement of Interest, updated not less frequently than once a year or whenever there is a material change, setting forth those specified interests, relationships, arrangements, and affiliations that may affect or be perceived to affect judgments of Relevant Parties in the conduct of their participation within the GNSO. A completed Statement of Interest, updated at least annually, is a precondition for Relevant Parties to participate in a GNSO group.

5.3.2 Electronic Form and Publication¹

To ensure consistency, ICANN Staff shall develop, maintain, and provide to Relevant Parties an electronic Statement of Interest form including procedures and instructions pertaining to its completion online. ICANN Staff shall make available an alternative arrangement (e.g. email) in the event that a Relevant Party does not have the necessary Internet access or capability to complete the form online. ICANN Staff shall post the completed Statements of Interest in the relevant section of the ICANN web site prior to Relevant Parties undertaking any activity and at least annually in the case of GNSO Councilors.

5.3.3 Content³

Relevant Parties shall complete all five sections of the Statement of Interest form as specified below:

1. Please identify your current employer(s) and position(s).
2. Please identify your declared country of residence, which may be the country to which you pay taxes.
3. Please identify the type(s) of work performed at #1 above.

4. Please list any financial relationship beyond *de minimus* stock ownership you may have, or may be actively negotiating a transaction or contract, with any company that has a financial relationship or contract with ICANN.

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¹ This section is **not approved** pending creation by ICANN Staff of a list of entities with which ICANN has a transaction, contract, or other arrangement (e.g. Registries, Registrars, Consultants, et al.), including appropriate considerations of privacy.

5. 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.

6. Please identify any other relevant arrangements, interests, or benefits as requested in the following two questions:

- 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 participation 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).

Comment: Two things going on here. First, a new #4 for the purpose of achieving the ability of the relevant party to self-disclose a financial relationship they are already aware of. Secondly, the deletion of questions that led us originally down the slippery slope of not enabling relevant parties to self-disclose absent information provided by ICANN, such as formal lists of every party it has an arrangement with.

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5.3.4 Timing of Updates and Recordation

A Relevant Party shall provide any changes/and or updates to his or her Statement of Interest within ten business days. Such changes shall also be recorded in the minutes of the meeting at which the Relevant Party advises of such change and should be posted as soon as possible.

Comment: Similar in purpose to the above comment. This deletion was felt necessary on the basis that it was too ambiguous in nature (i.e. “tangible or intangible benefit”) for relevant parties to be able to objectively self-disclose.

Deleted: <#>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 relationship should be disclosed in the Statement of Interest just as should employment by a contracted party or a business relationship with a non-contracted party that 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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5.4 Disclosure of Interest Procedures

5.4.1 Applicability

A Relevant Party 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.

5.4.2 Duty to Remind Participants and Speakers

- a. The GNSO Council Chair or Vice-Chairs, Working Group Chair, Work Team Chair, Committee Chair, or Chair of any other organization 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 such disclosures shall be recorded in the minutes of that meeting. At that time, anyone who has a question about the interpretation or meaning of a Relevant Party’s Disclosure of Interest may petition the Chair to request clarification from the Relevant Party. Concerns related to the accuracy and/or completeness of a Disclosure of Interest are addressed in Paragraph 5.5.
- b. 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 Disclosures of Interest prior to beginning their remarks.

Comment: This edit has been made as a result of feedback the work team received in regards to the inefficiencies experienced in practice. The intent of this section (Duty to Remind Participants) was not to bog down meetings procedurally speaking but to strike a balance. In this light, based upon feedback received, deleting the requirement that participants “should be” polled individually is believed to strike this balance and the unintended confusion it has caused in the implementation. It is the view of the work team that the remaining language properly captures the concept of the “duty to remind” without the added complication deemed procedural in nature as expressed to us.

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5.5 Completeness and Accuracy

5.5.1 Completeness

ICANN Staff shall review each Relevant Party's Statement of Interest and Disclosure of Interest to ensure completeness. If ICANN Staff has reason to believe that a Relevant Party's documentation is not complete, ICANN Staff shall notify the Relevant Party and request that the omitted or missing information be provided or, if there are extenuating circumstances, explanation as to why the document is incomplete. If the matter cannot be satisfactorily resolved with the Relevant Party after a reasonable period, Staff shall raise the matter with the applicable Chair pursuant to 5.5.3.

5.5.2 Accuracy

Concerns raised by ICANN Staff or a member of the ICANN community about the accuracy of a Relevant Party's Statement of Interest or Disclosure of Interest, including whether a direct or indirect interest that may affect the Relevant Party's judgment with respect to a pending matter has been disclosed, shall be brought to the attention of the applicable Chair and handled pursuant to 5.5.3.

5.5.3 Appeal Process

If concerns about the completeness and/or accuracy of a Statement of Interest or Disclosure of Interest persist after reasonable attempts are made to resolve them with the Relevant Party, the matter shall be brought to the attention of the applicable Chair and handled according to decision-making methodology and appeal process as prescribed in the GNSO Working Group Guidelines². At each step of the appeal process, every effort should be made to resolve the accuracy concerns by working cooperatively with the Relevant Party.

5.6 Failure to Comply

5.6.1 Requirement to Participate

A Statement of Interest form must be submitted by each Relevant Party in accordance with these procedures. If a Relevant Party fails to provide a Statement of Interest prior to the start of a GNSO meeting, the Chair may temporarily suspend that Relevant Party's participation until the Statement of Interest is provided. Participation shall not be suspended if a Statement of Interest is subject to the Appeals process of 5.5.3 until a final determination is made under that process.

5.6.2 Suspension

Pursuant to the appeal provisions referenced in 5.5.3, if it is determined that a Relevant Party has not complied with these procedures, the GNSO Council Chair, in consultation with the Vice-Chairs, may suspend that Relevant Party's participation in GNSO affairs until the failure to comply has been remedied. The ICANN General Counsel and GNSO Council will be notified when such actions are taken as a matter of protocol and the decision to take this step will be

² A reference will be supplied once the final document is approved and published.

recorded in the GNSO Council minutes. If the failure to comply pertains to a Chair, the applicable Vice-Chairs shall act pending completion of the appeal process. If the failure to comply pertains to the GNSO Council Chair, the Vice-Chairs shall act after consulting with the ICANN Vice President - Policy Development.