

## Proposed Redlines to 2012 Applicant Guidebook Code of Conduct and Conflict of Interest Guidelines

### 2.4.3 Code of Conduct

The purpose of the New gTLD Program ("Program") Code of Conduct ("Code") is to prevent actual, potential, or perceived conflicts of interest and unethical behavior by any vendors contracted by ICANN org to support services or processes for the New gTLD Program (Vendors) with regard to, including but not limited to application evaluation, objection processes, or dispute resolution processes. The Applicant Guidebook is intended to set forth the principles of the Code of Conduct and nothing in this Code should be considered or interpreted as limiting duties, obligations or legal requirements with which Vendors must comply.

The ethical obligations of the Vendors begin upon acceptance of the appointment. Vendors shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application evaluation, objection, and dispute resolution processes. Vendors are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public, of the Vendor's objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of conflicts of interest, are not acceptable.

Once the Vendor has accepted an appointment, the Vendor should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue, or if the Vendor becomes aware of a conflicts of interest situation, as described in the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.2).

A Vendor who withdraws prior to the completion of the application evaluation or objection and dispute resolution processes, whether upon the Vendor's initiative or upon the request of one or more of the applicants, should take reasonable steps to protect the interests of the applicants/parties in the application evaluation or objection and dispute resolution processes, including return of evidentiary materials and maintaining the confidentiality of any confidential information or materials.

#### 2.4.3.1 Principles

Vendors are expected to be guided by the following principles in carrying out their respective responsibilities.

##### 2.4.3.1.2 Bias -- Vendors shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications or dispute resolution proceedings;

Deleted: for Panelists

Commented [1]: we expanded the realm of what is covered to include potential or perceived conflicts of interest in addition to actual/real conflicts of interest.

Deleted: real and apparent

Commented [2]: v has been capitalized per Justine's suggestion. Justine: "should v be capitalized? i.e. "Vendor" like what you had with "Panelist".

Commented [3]: Bookmark: Subject to ICANN Board's adoption of SubPro Recs 32.1 32.2 and 32.10, may need to include/consider evaluation challenges and objection appeals.

Commented [4]: 👍

Deleted: Evaluation Panelist. For the purposes of this Code, "Panelist" is defined as Evaluation Panelist, dispute resolution service provider panelist, or the ICANN Independent Objector (IO)("Panelist"). This Code ...

Deleted: summarize

Deleted: Panelists

Deleted: Panelists

Deleted: Panelists

Deleted: compromise

Deleted: Panelists

Deleted: Panelists

- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated or the matter(s) at issue in the dispute resolution proceeding;
- exclude themselves from participating in the evaluation of an application or a dispute resolution proceeding if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation or proceeding;
- exclude themselves from evaluation activities or dispute resolution proceedings if they are philosophically opposed to or are on record as having made criticisms about a specific type of applicant, application, or matter at issue in the evaluation or the dispute resolution proceeding; and,
- conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. Vendors should avoid conduct and statements that give the appearance of partiality toward or against any applicant, application, or party to the dispute resolution proceeding.

Deleted: and

Deleted: generic

Deleted: or

Deleted: .

Formatted: Font color: Black

**2.4.3.1.3 Compensation/Gifts** -- Vendors shall not request or accept any compensation whatsoever or any gifts of substance from the applicant being reviewed, anyone affiliated with the applicant, or any party or party affiliate involved in the dispute resolution proceeding. (Gifts of substance would include any gift greater than USD 25 in value). If in doubt, the Vendor should err on the side of caution by declining gifts of any kind. Note, however, that during a dispute resolution proceeding, an applicant who is the objector is required to submit payment directly to the applicable dispute resolution service provider to cover the applicant's share of fees and expenses of the members of the Panel. Accepting this payment does not mean a dispute resolution service provider panelist is in violation of the Code of Conduct in this section. Refer to the Dispute Resolution Procedures document contained in the Applicant Guidebook for more information about fees and payments.

Deleted: Panelists

Deleted: A

Deleted: or

Deleted: A

Deleted: If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. ...

Deleted: Panelist

Commented [5]: There is a definition for Evaluation Panelist.

Commented [6]: changed to dispute resolution service provider panelist

Deleted: Panelists

**2.4.3.1.4 Conflicts of Interest** -- Vendors shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.2).

**2.4.3.1.5 Confidentiality** -- Confidentiality is an integral part of the application evaluation as well as objection and dispute resolution processes. Vendors must have access to sensitive information in order to conduct evaluations or dispute resolution proceedings. Vendors must maintain confidentiality of information entrusted to them by ICANN and the applicant and any other confidential information provided to them from whatever source, except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Deleted: Panelists

Deleted: Panelists

Deleted: A

**2.4.3.1.6 Data Protection and Privacy** – All Vendors are required to comply with the New gTLD Program's data protection principles and retention procedures. For more information, see section [\[cross-reference Data Protection and Privacy\]](#) in the Applicant Guidebook.

**2.4.3.1.7 Affirmation** -- All Vendors shall read this Code prior to commencing evaluation or participating in a particular dispute resolution proceeding and shall certify in writing that they have done so and understand the Code.

### 2.4.3.2 Conflict of Interest Guidelines for Vendors

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established the following Conflict of Interest guidelines and procedures for the Vendors. ICANN will require the Independent Objector and service providers to ensure that all Panelists:

- Document acknowledgement and understanding of the Conflict of Interest guidelines. Disclose all business relationships engaged in at any time during the past six months from initial appointment that are directly or indirectly related to ICANN's new gTLD Program.

Where possible, ICANN will identify and secure primary and backup providers for evaluation and dispute resolution. In conjunction with the Vendors, ICANN will identify conflicts and re-assign applications as appropriate to secondary or contingent third-party providers to perform the reviews.

**Guidelines** -- The following guidelines are the minimum standards with which all Vendors must comply. A fundamental principle underlying these Guidelines is that each Vendor must be impartial and independent of the application(s), applicant(s), and parties at the time they accept an appointment to act as a Vendor, and must remain so during the entire course of the application evaluation or dispute resolution processes.

A Vendor shall decline to accept an appointment or, if the evaluation or proceeding has already been commenced, refuse to continue to act as a Vendor, if they have any doubt as to their ability to be impartial or independent. The same principle applies if such facts or circumstances existed prior to appointment or have arisen since the appointment.

If facts or circumstances exist that may give rise to doubts as to the Vendor's impartiality or independence, the Vendor shall disclose such facts or circumstances to the applicant(s), parties, and the service provider or other appointing authority prior to accepting the appointment or, if thereafter, as soon as they learn of them. Any doubt as to whether a Vendor should disclose certain facts or circumstances should be resolved in favor of disclosure.

It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Vendor should evaluate whether the existing

Deleted: Panelists

Deleted: services

Deleted: 1

Deleted: **Panelists**

Deleted: It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants. ...

Deleted: EvaluationPanelists

Deleted: To help ensure that the guidelines are appropriately followed ...

Commented [7]: ?

Commented [8]: How would this apply to an IO? Is an IO a "service provider" or simply an individual?

Commented [9]: see proposed changes. Note: the IO is an individual retained as an independent consultant and is required to contractually agree to perform services.

Deleted: Require each Evaluation Panelist, to

Deleted: document

Deleted: Require each Evaluation Panelist to

Deleted: d

Deleted: . ¶

Formatted: Font color: Black

Formatted: No bullets or numbering

Commented [10]: Note: this text is from the 2012 AGB and used to be included in the bulleted list above.

Commented [12]: changed to Vendors

Deleted: panels

Deleted: Evaluation Panelists

Deleted: I develop and implement a process to

Deleted:

Commented [13]: Note: this text is from the 2012 AGB and used to be included in the bulleted list above.

Formatted: Font color: Black

Deleted: **Compliance Period** -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the final outcomes of all the applications from the Applicant in question.

Deleted: Evaluation Panelists

Deleted: It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluat... [1]

facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest. If conflicts of interest are found to exist, ICANN will work with Vendors to reassign applications as appropriate.

Commented [14]: This text is from the 2012 AGB

Vendors and Immediate Family Members:

Deleted: Evaluation Panelists

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the applicant or any party(ies) to a dispute resolution proceeding during the compliance period, which begins upon acceptance of the appointment.
- Must not currently hold or be committed to acquire any interest in a privately-held applicant or any party(ies) to a dispute resolution proceeding.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed applicant's or any party(ies) to a dispute resolution proceeding outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the applicant or any party(ies) to a dispute resolution proceeding.
- Must not have been named in a lawsuit with or against the applicant or any party(ies) to a dispute resolution proceeding.
- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the applicant or any party(ies) to a dispute resolution proceeding;
  - Promoter, underwriter, or voting trustee of the applicant or any party(ies) to a dispute resolution proceeding; or
  - Trustee for any pension or profit-sharing trust of the applicant or any party(ies) to a dispute resolution proceeding.

Deleted: A  
Deleted: C  
Deleted: P  
Deleted: A  
Deleted: A  
Deleted: A  
Deleted: A  
Deleted: A  
Deleted: A  
Deleted: A  
Deleted: A

Note that service providers also maintain their own conflict of interest procedures that Panelists are required to comply with.<sup>1</sup>

**Definitions--**

Panelist: An Evaluation Panelist or a dispute resolution service provider panelist is any primary, secondary, and contingent third party Panelist engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist or a dispute resolution service provider panelist.

Commented [15]: I assume the IO is defined under Objections?  
Commented [16]: Note: This is currently defined under Section 3.2 - Public Objection and Dispute Resolution Process in the AGB  
Deleted: Evaluation  
Deleted: any individual associated with the review of an application. This includes  
Deleted: s

<sup>1</sup> More information on the Code of Conduct and Conflicts of Interest guidelines of service providers can be found here: [link to page that will be published on the Next Round website including links to service provider's code of conduct and conflicts of interest guidelines]

Professional Services: Professional Services include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

Deleted: ,

Vendors: Vendors are contracted by ICANN org to support services or processes for the New gTLD Program, including but not limited to the application evaluation, objection processes, or dispute resolution processes.

Formatted: Font: Not Bold, Not Italic

### 2.4.3.3 Code of Conduct Violations

Deleted: 2

Vendor breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary.

Deleted: Evaluation Ppanelist

Breaches of the Code may be cause for removal of the person, persons or provider committing the infraction.

Deleted: Serious b

Deleted: dismissal

In a case where ICANN determines that a Vendor has failed to comply with the Code of Conduct, the results of that Vendor's review for all assigned applications may be discarded and the affected applications will undergo a review by new Vendors.

Deleted: Panelist

Deleted: Panelist's

Deleted: will

Deleted: Ppanelists

Concerns of applicants regarding Vendors should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public regarding the Code of Conduct (i.e., non-applicants) can be raised via the Community Action Forum, as described in Module 1 or through other avenues such as the Ombudsman and the Reconsideration Request process.

Deleted: Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period.

Deleted: panels

Commented [17]: Concerns of the general public (i.e. non-applicants) regarding the Code of Conduct or any alleged infractions thereof, can be ....

Question: is applicant comment covered in Module 1?

Commented [18]: TBD

Deleted: public

Deleted: comment

Deleted: f

Formatted: Highlight

**Note: The text below relates to the ICANN Board Conflicts of Interest Policy and is not included in the AGB.**

The ICANN Bylaws require that ICANN have a conflicts of interest policy applicable to the Board of Directors. The purpose of this Board 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 ICANN, to ensure that the deliberations and decisions of ICANN are made for the benefit of the Internet community, as a whole, and to protect ICANN's interests when ICANN 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.

Per Section 7.1 of the COI Policy, "Covered Person" shall mean an Officer, Director, Board Liaison or Key Employee of ICANN.

See “Board Conflicts of Interest Policy (COI Policy)” at <https://www.icann.org/resources/pages/governance/coi-en#:~:text=The%20purpose%20of%20this%20Board,the%20Internet%20community%2C%20as%20a> for more information.

