

Sample Guidelines for Due Diligence in Board Removal Discussions

3 February 2016

To support the community in having open discussions on board removal, and to facilitate those conversations proceeding in an accountable manner, guidelines must be developed during the implementation phase. Following guidelines will facilitate participation in a positive manner, and aligns well with the diligence requirement that is described in the proposal on indemnification. The outline below is offered to begin sharing some thoughts on how this could be achieved.

Some potential guidelines, for example, could identify items that should be considered prior to making assertions about Board members, such as:

1. Do I have some facts or pieces of information that should be evaluated before they are asserted?
2. Do I have information, declarations or other documents or evidence that the facts asserted are true?
3. Have I received any information or facts that are inconsistent with the facts I am asserting?
4. Have I documented the facts and counterstatements appropriately in the rationale or supporting attachments and documentation?
5. Does any new information that I have obtained change the veracity or truthfulness of the documents? Accordingly, do I need to withdraw any statements or information in light of the changed or new information?

The guidelines also could set out a process, such as requiring the list of considerations and expected standards of behavior to be posted during every Community Forum discussion.

Providing standardized processes, coupled with expectations on behavior, lays the groundwork for a fair, open discussion that minimizes from the outset the potential for statements to be made that might be seen as actionable by Board members.

The development of the indemnification scheme for Board member removal processes, coupled with companion guidelines, represent protections that we are building into the system to provide further assurances to community members that they can exercise their new powers. It is important to recall that while the ICANN community has never been shy in their criticism of Board members, there has never been, in the history of ICANN, a suit brought by a Board member against a community member based on their participation in ICANN.