

CCWG-ACCT: Indemnification and Advancement of Expenses

In order to encourage and promote healthy discussions throughout the director removal and Board recall process:

- If a director initiates a lawsuit in connection with his or her removal or recall (for example, a director claims that he was libeled in the written rationale calling for his removal), ICANN will provide indemnification and advance expenses as provided below.
- Indemnification will be available (i) to a member of a Supporting Organization, an Advisory Committee, the Nominating Committee, or the Empowered Community (ii) who is acting as a representative of such organization or committee (iii) for actions taken by such representative in such capacity pursuant to processes and procedures set forth in the Bylaws (for example, the chair of a Supporting Organization submitting a written rationale for the removal of a director).
- As required by California law and consistent with ICANN's current Bylaws, indemnification will only be available if the actions were taken (i) in good faith and (ii) in a manner that the indemnified person reasonably believed to be in the best interests of ICANN.
- Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2.
- Indemnification will cover amounts actually and reasonably incurred in connection with the lawsuit, such as reasonable attorneys' fees of no more than one firm, judgments, and settlements approved by the Board in its reasonable discretion.
- ICANN will advance funds to cover defense expenses where the person meeting the requirements set forth above undertakes to repay to ICANN amounts received for expenses for which the requirements for indemnification are ultimately determined not to have been met.

Justin 2/10/2016 6:46 AM

Comment [1]: "Contemplated by" is too broad and vague.

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Comment [2]: "Presumed" already covers this and we should avoid making readers try to give meaning to every word when one word will due.

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Comment [3]: There needs to be a limit on the attorneys' fees that will be covered. ICANN cannot afford to cover someone hiring 10 different firms.

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Comment [4]: The Board needs to have approval over these settlements, otherwise ICANN could be put into a situation where it is indirectly making a settlement payment to a current or recently removed director.