

**ICANN Business Constituency (BC) Comment on**  
**[Community Participant Code of Conduct on SOIs and General Ethics Policy](#)**

**2-Dec-2024**

**Background**

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter. The mission of the BC is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. Promotes end-user confidence because it is a safe place to conduct business;
2. Is competitive in the supply of registry and registrar and related services; and
3. Is technically stable, secure and reliable.

**General Comment**

The Business Constituency (BC) appreciates the opportunity to provide feedback on the [Draft ICANN Community Participant Code of Conduct Concerning Statements of Interest](#) and the draft [General Ethics policy](#). The BC supports the goal of fostering transparency, trust, and ethical conduct within the ICANN community. Statements of Interest (SOI) play a critical role in guiding the ethical and transparent participation of the ICANN community in decision-making processes. We believe that robust transparency mechanisms are essential for the legitimacy and credibility of ICANN's processes and for ensuring that all participants act in good faith and with full disclosure of the interests they represent.

We support the Code of Conduct's objectives of promoting transparency, accountability, and ethical participation within the ICANN community. Further, we recognize the importance of maintaining a level playing field and preventing conflicts of interest. To enhance the effectiveness of the draft Code so that it balances transparency with the practical realities faced by businesses, we offer the following comments and recommendations. Below are the 6 points in the draft SOI, followed by BC comments and suggested edits (in blue):

[In general, we suggest breaking down long paragraphs into shorter sections and using clearer language to facilitate understanding](#)

1. ***Interests and Experience Bring Value.*** Participants in the ICANN community bring a wide variety of experience and views to ICANN processes. Participants also, at times, represent the views of others, such as an employer, an organization with which they are aligned, a trade association, a client, an interest group, a stakeholder group or constituency, or other representative relationship. Also at times, participants might be advancing a purely personal perspective. The multistakeholder model thrives when a diverse variety of interests and experience inform debate and deliberation.
2. ***Informed Participation.*** Informed participation has many facets, including staying abreast of deliberations and attending meetings and working sessions with appropriate preparation.

Informed participation also requires making sufficient disclosures such that other participants are informed and aware of the interests and representations that other participants bring to influence ICANN community deliberations. Disclosures must be made at the appropriate times, often in advance of meetings and working sessions, to allow other participants to be well and appropriately informed.

3. **Statements of Interest.** To remain accountable to others across the ICANN community, all community participants are expected to maintain up-to-date Statements of Interest as required within the groups in which they are participating. Participants are encouraged to identify all personal, professional, financial and representational interests on those Statements of Interest. If participants are participating on behalf of a trade association, consortium, or similar organization, those participants are urged to identify where other participants within ICANN can locate pertinent information about the membership or funding of that organization.

BC comment: The [BC Charter](#) designates the BC Chair “Be a spokesperson for the Business Constituency” . Accordingly, the BC Chair is to speak only for the BC, based on [established BC Positions](#) and concerns or questions raised by BC members.

BC comment: Disclosure that would adversely affect trade secrets, proprietary information or confidential business strategy should not be required. In these cases the business and ethical considerations of the community participant should not bar them from participation or deprive the community of their perspective. The big picture is that all members who actively participate have some interest in the outcome of ICANN processes. The community posture should be to accept comments, consider them and then accept or reject based on merit rather than judging them based on the speaker’s motivation. We recommend clarifying how participants can protect sensitive business information while still disclosing relevant interests.

BC comment: Trade associations are entities that sometimes take positions distinct from positions taken by individual association members. Therefore, self-identifying as representing a trade association should be seen as satisfying these proposed disclosure requirements.

BC comment: We recommend specifying disclosure mechanisms for each forum, ensuring consistency across ICANN processes. We urge clarification on exceptions to disclosure requirements, ensuring participants understand when confidentiality is justified, and how to claim the exception.

4. **Disclosures of Additional Interests.** There may be situations where a participant might not be able to maintain a singular blanket Statement of Interest. For example, when a participant represents a particular client in relation to one issue, but for a different issue, the participant is there on behalf of a second client or group. Similarly, a participant might have a unique financial interest in one area of policy work that might not be present in other policy work. Participants are encouraged, when making spoken or written interventions, to clearly identify the interests at

hand for the purpose of that intervention or issue. This allows other participants to clearly understand the viewpoints and motivations underlying the intervention. This also allows the ICANN Board members, when considering the resulting recommendations, advice or outputs, to understand the scope of community participation and evaluate whether any of the interests present and influencing the ICANN community discussions might give rise to any actual, potential or perceived conflicts of interest for Board members.

BC comment: The ICANN Participant Code of Conduct's requirements and provisions may impose an excessive administrative burden on businesses, especially small and medium sized enterprises (SMEs), potentially deterring their participation in the ICANN processes or leading non-compliance due to limited resources or understanding. We suggest streamlining disclosure processes and provide clearer guidance to minimize the administrative burden on businesses.

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5. ***Personal and Collective Responsibility.*** The obligation to fully disclose interests lies primarily with each individual participant. If an entity maintains engagements with multiple participants, including for the purpose of participating in different groups or on different issues across the ICANN community, that entity is strongly encouraged to confirm that each of their representatives are making full and proper disclosure. Regular consulting relationships or other engagements typically are not duty-bound to be maintained as confidential, and participants and their clients should not use contractual confidentiality terms in ways that shield the release of information about representation within ICANN processes.

BC comment: The BC does not support any SOI guidelines that would require attorneys to break privilege or otherwise contravene obligations and restrictions in their legal jurisdiction or in their professional licensing requirements. Further, the ICANN Participant Code of Conduct may conflict with existing laws and regulations governing business operations, potentially causing businesses to face conflicting requirements or uncertainty, leading to compliance or reputational damage. We urge ensuring the Code aligns with existing laws and regulations governing business operations.

6. ***Impact of Failures to Disclose.*** Because ICANN participants are expected to bring their variety of interests to the multistakeholder processes, there are many situations where personal, financial, organizational or professional interests in the matter under discussion are expected to be present. In most situations, so long as the interests are properly disclosed, conflict of interest concerns are not present. Statements of Interest are intended to support broad and informed participation, as opposed to having the effect of excluding people from participation in ICANN community processes. However, failure to properly disclose interests that materially impact the deliberations within the ICANN community, or are likely to materially impact those deliberations

and processes, could represent an ethical lapse that deprives all other participants from relevant information. Failure to disclose those interests also could result in depriving ICANN (including the ICANN Board of Directors) of necessary or proper information from which to assess that its decisions are free from conflicts of interest or the appearance thereof. Nothing in this Code should be considered as limiting a participant's duties, or obligations with which ICANN participants are expected to comply.

[BC comment: We advocate establishing a clear enforcement mechanism for the Code on SOI, outlining consequences for non-compliance.](#)

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Below are the 4 points in the draft [General Ethics Policy](#), followed by BC comments and suggested edits (in blue):

### **ICANN Community Ethics Policy Development**

An ICANN Community Ethics Policy is not embedded in any single document, but is instead an assemblage of documents, procedures and norms that guide and inform ethical behavior within the ICANN community. Many components of the ICANN Community Ethics Policy are well embedded into the ethos of the community, including the Expected Standards of Behavior and the Community Anti-Harassment Policy. Community interactions are also guided by relevant Operating Procedures, Charters and other documents that set out expectations for participation and interaction. Many of these documents set forth paths for compliance and enforcement.

There have been recent community conversations regarding how those participating in ICANN community processes can better understand the interests present in those processes, as the current Statement of Interest processes appear to not be comprehensive enough. ICANN's multistakeholder community thrives on the variety of perspectives and interests that shape community deliberations, and the recent Statement of Interest conversations revealed an opportunity to provide more clarity for the community on enhancing disclosure practices.

To provide that clarity, ICANN org is producing a draft of ICANN Community Participant Code of Conduct Concerning Statements of Interest, intended to support ethical practices of disclosures when participating across the ICANN community. The release of the ICANN Community Participant Code of Conduct Concerning Statements of Interest is part of an evolution of how we talk about ethics within the ICANN community, including through the recognition that there are a suite of documents and practices that have long guided ethical behavior. Once adopted, the ICANN Community Participant Code of Conduct Concerning Statements of Interest will become part of the ICANN Community Ethics Policy. To fully implement the ICANN Community Participant Code of Conduct Concerning Statements of Interest, each Supporting Organization, Advisory Committee, and other chartered groups within ICANN must evolve or review their Statement of Interest and other participation practices to assure alignment.

BC comment: When there must be disclosure, a community member should be allowed to describe their interests, or state that they have a particular interest in the outcome, rather than being required to name their clients. Statements should be specific enough to understand the area of interest.

When we as a community identify future areas where clarity can be offered or improvements can be made, we can discuss those as other facets of the ICANN Community Ethics Policy, without disturbing the practices that are already working well.

BC general comment on the draft [General Ethics Policy](#):

*Comprehensive Framework:* We recommend ensuring the ICANN Community Ethics Policy provides a comprehensive framework for ethical behavior, including guidance on conflicts of interest, confidentiality, and disclosure.

*Alignment with Existing Policies:* We urge ensuring the ICANN Community Ethics Policy aligns with existing ICANN policies, including the Expected Standards of Behavior and the Community Anti-Harassment Policy.

*Review and Evaluation:* We recommend establishing a process for regular review and evaluation of the ICANN Community Ethics Policy to ensure its effectiveness and identify areas for improvement.

*Training and Resources:* We suggest providing resources or training on conflict of interest identification and management to support participants.

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This comment was drafted by Bartlett Cleland, Arinola Akinyemi, Segunfunmi Olajide, Lawrence Olawale-Roberts, and Steve DelBianco.

It was approved in accord with our [Charter](#).