

**THE FIDUCIARY DUTY OF
AMERICAN REGISTRY OF INTERNET NUMBERS
DIRECTORS AND OFFICERS**

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To

ARIN Board of Trustees
2017 Ethics Presentation

- Authorize major corporate actions, assure adherence to the corporate mission by alignment of corporate strategy and executive compensation, and approve ARIN strategic plan
- Provide advice and counsel to the corporation's management:
 - especially to its Chief Executive Officer/President
 - the Board acts both as a sounding board and approval mechanism for the CEO
 - sets general future steps ARIN should take
 - focuses on risk oversight and mitigation
- Monitor management's performance:
 - the board sets overall objectives and evaluates whether objectives are met
 - the board is responsible for the selection, removal, and compensation of the Chief Executive Officer/President
 - the Board ensures a corporate culture of ethical and legal compliance

- Be “adequately” informed of the corporation’s financial status:
 - Hire independent auditors
 - Establish sound accounting policies
 - Review the non-profits’ investments at regular intervals
 - Ensure that accurate and transparent financial reports are created

- Provide access to the corporate decision-making process:
 - Allow ARIN members, employees, and the community to be given a voice
 - Allow external views to be considered

- "Duty" is classically divided into two separate categories:
 - "Duty of Loyalty"
 - e.g., a duty to avoid conflicts of interest
 - "Duty of Care"
 - Essentially one of doing one's best on behalf of the non-profit

- Trustees on two boards, *e.g.*, IETF and ARIN; or NANOG and ARIN; or ISOC and ARIN; or private company and ARIN have a duty to disclose their multiple relationships
- The trustee owes the same duty to both entities, and ARIN's Nomination Committee must consider potential conflicts of interest in assessing the suitability of any candidate to serve
- Additionally, the trustee (or the rest of the Board) may feel that those wearing two hats may be one hat too many
- Multiple roles have the potential to pose an unresolvable inherent conflict in the mind of the trustee on some matters who may then have to abstain from a vote, or ultimately resign, if the participation on the matter is inherent to the duties of the trustee

- Corporate Opportunity:
 - beware of conflicts of interest
 - maintain confidentiality
 - fairness to organization
- What is a Conflict of Interest?
 - see bylaws Article VI (1)(d) and (e) and Conflict of Interest Policy

Trustee Standard Of Care and Business Judgment

- A trustee has a duty to exercise *prudent business judgment*, conduct due diligence for business planning and operations, avoid or reduce risk of liability to ARIN, and any other specific duties or expectations spelled out in the bylaws
- Directors will not be held liable for good faith decisions made upon reasonable information, and with some rationality, even if the decision turns out to be a poor one
- Courts do not want to be in the business of second-guessing board decisions, and therefore substantial deference is given to boards if they act in good faith

- Under this doctrine, the board members need to make informed decisions
- If insufficient information is available for such a decision it is the job of the trustee to put the “brakes” on
- Constructive review of management actions or proposals does not need to create a “confrontational climate”
- Management should encourage Board due diligence responsibilities and welcome inquiries for additional information at any time. (Ongoing direction is a different matter; this is provided by the Board collectively or via Board members in performance of their officer duties)

- Some examples of director and/or staff action which may result in personal liability:
 - acting outside the scope of their authority (ultra vires)
 - wasting or misusing corporate funds (travel)
 - usurping a corporate opportunity
 - violations of federal or state antitrust laws
 - failure to pay or withhold taxes
 - violations of federal safety or labor practice laws
 - gross negligence in performing their duties
 - participating in actions constituting harassment

- ARIN may properly pay expenses of its directors or officers who are personally named as defendants in lawsuits (or administrative agency actions, etc.) involving the corporation
- ARIN may pay fines, judgments, or settlement amounts as well as expenses (such as attorneys' fees) in certain circumstances, but not all
- You are “indemnified” when you act consistent with this briefing
- You are not “indemnified” if successfully prosecuted criminally or civilly
- ARIN has significant D&O and other insurance coverage that protects trustees