

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

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To

ARIN Board of Trustees  
2019 Ethics Presentation

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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 actions ARIN should take
- focus 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:

- Ensure independent auditors are engaged
- Require 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

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 respond with data to Board due diligence requests for additional information at any time. Overly burdensome or unnecessarily numerous requests are not appropriate. (Ongoing direction 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
- violation of the trustee code of conduct

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 best practices

You will not be “indemnified” if successfully prosecuted criminally or civilly

ARIN has significant D&O and other insurance coverage that protects trustees. Insurance companies can refuse coverage due to trustee conduct