

Byron Holland

25 August 2011-09-27

I wrote a blog on this topic a couple of weeks ago.

It has some links to how the World Bank as well as the Canadian government handles conflict/conduct rules that may be of interest for this discussion.

<http://blog.cira.ca/2011/07/rational-rules-beget-rational-behaviour/>

Lesley Cowley OBE

I have looked into the UK Government rules and, like the US, there is an ethics committee that reviews applications from people on a case by case basis. The rules apply to senior civil servants as well as politicians and try to strike a balance between public perception and the need for people to be employable post departure.

Further info is at:

<http://acoba.independent.gov.uk/>

Perhaps we could usefully collate best practice from around the globe to inform the discussion?

Becky Burr

24 August 2011

To be clear, except in a very, very small number of cases, US Government ethics would NOT prevent someone from joining a board or becoming an employee of a company that they regulated while in government service.

For the most part, the rules only prohibit appearing before the government on behalf of that client for some period of time, particularly on matters in which one was substantially involved. Meredith Atwell Baker, mentioned by Keith, is an absolutely on target example. As a member of the Federal Communications Commission, she approved the NBC/Comcast merger, and shortly thereafter went to work for Comcast. It is my understanding she consulted government ethics officials and was cleared to do this.

I agree with Keith - this is an important issue, but one that deserves careful consideration. ICANN is a complex organization, and many people involved in running it are likely to come from the community and return to the community

when their time of service comes to an end. We need to be sure that can happen in a transparent and ethical way (unless we want to have the board made up of people from outside the community).

And, in my experience, being an ICANN "insider" and \$5 will get you a Starbucks latte, but not much else ...

Keith Davidson 24 August 2011

Thanks Becky, this is interesting and relevant. It should be noted too that there is significant consternation from some in the USA about high level political folks being able to by-pass the "cooling off" periods, and quoting [http://en.wikipedia.org/wiki/Revolving\\_door\\_%28politics%29](http://en.wikipedia.org/wiki/Revolving_door_%28politics%29):

"One big loophole is that these restrictions do not apply to many high-level policy makers..., who can join corporations or their boards without waiting." Examples of individuals who have moved between roles in this way in sensitive areas include Dick Cheney (military contracting), Linda Fisher (pesticide and biotech), Philip Perry (homeland security), Pat Toomey, Dan Coats, and former FCC commissioner Meredith Attwell Baker (media lobbying)."

Also, in ICANN's past, there was little or no concern that Andrew Maclaughlin moved from a senior staff position in ICANN to Google (an ICANN Registrar) or Vint Cerf who moved from Chair of ICANN onto the Verisign advisory board within a short time of his departure - noting one of ICANN's chief roles is in fact the regulation / oversight of Verisign. Moving to Google or Verisign with their significant voices and revenues in the Internet world might be somewhat more "bad" than moving to M+M as a zero revenue start up. Likewise a move from, say, JJ on ICANN staff to M+M, who potentially penned the new gTLD contracts for ICANN, might be seen as a real conflict...

It seems this issue is being pushed hard from outside ICANN, possibly from the anti-new-gTLD lobby, and causing distraction and disharmony in the ICANN arena may be the goal, or at the least, to put some pressure on the US Government to manage ICANN more closely - something I think we all agree is not desirable.

As good governors here, let's consider the facts, and the legal issues only. Peter D-T and others have to wrestle with their own consciences regarding any moral or ethical decisions.

When you reflect on PDT's decision versus those made by Cheney, Fisher, Perry, and "our very own" Meredith Attwell Baker and others, perhaps the seriousness of this instance becomes apparent?

1. ICANN could ask PDT and M+M if there were any negotiations regarding the appointment prior to PDT's departure from the ICANN board. If the answer is no, then there is no follow up process for ICANN. If the answer is yes, then ICANN could have some recourse against PDT.
2. Does the Board have appropriate conflict of interest and restraint of trade policies applicable to the board and staff of ICANN? If yes, no action, if no, recommend appropriate policies.

Becky Burr

23 August 2011-09-27 Regarding the conflicts question, senior US government employees are subject to several post-employment conflict of interest policies. As you will see from the list, nothing prohibits an individual from working on an issue that they worked on as a government employee. Rather, they are precluded from representing a third party before the government - i.e., exploiting their relationship with former colleagues.

1. Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially.
2. Two-year restriction on any former employee's representations to United States concerning particular matter for which the employee had official responsibility.
3. One-year restriction on any former employee's representations, aid, or advice concerning ongoing trade or treaty negotiation.
4. One-year restriction on any former senior employee's representations to former agency concerning any matter, regardless of prior involvement
5. Two-year restriction on any former very senior employee's representations to former agency or certain officials concerning any matter, regardless of prior involvement.
6. One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, foreign entity.
7. One-year restriction on any former private sector assignee under the Information Technology Exchange Program representing, aiding, counseling or assisting in representing in connection with any contract with former agency

[http://www.usoge.gov/laws\\_regs/regulations/5cfr2641.aspx](http://www.usoge.gov/laws_regs/regulations/5cfr2641.aspx)

There are, of course, prohibitions about conflicts of interest while serving as a government employee. Those won't quite work in an organization like ICANN, but for information, here is the link.

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e62a2086dab40719f9b70b63a58695eb&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5#5:3.0.10.10.9.4.50.2>