



Date:  
05/13/2014

Revision Number:  
1

Effective Date:  
05/13/2014

Page Numbers:  
Page 1 of 4

## The U.S. Foreign Corrupt Practices Act Policy and Procedures

### I. **PURPOSE**

This policy statement summarizes the applicable provisions of the Foreign Corrupt Practices Act of 1977, including its 1988 and 1998 amendments ("FCPA"), and sets forth the procedures to be followed by directors, officers, employees, agents and representatives of NOW Inc. ("DNOW") and its subsidiaries and affiliates, including its foreign subsidiaries (collectively referred to as the "Companies"), when confronted with an issue of questionable payments.

### II. **BACKGROUND**

The U.S. Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to help restore public confidence in the integrity of the American business system after it was determined in the mid-1970's that illegal payments to foreign government officials had become an all too common business practice. The FCPA was intended to have and has had an enormous impact on the way American firms do business. Many firms that paid bribes to foreign officials have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracting. In some cases, their employees and officers have gone to jail. Following the passage of the FCPA, the U.S. Congress became concerned that American companies were operating at a disadvantage compared to foreign companies who routinely paid bribes and, in some countries, were permitted to deduct the cost of such bribes as business expenses on their taxes. Accordingly, the government began a process that ended with the United States' major trading partners enacting legislation similar to the FCPA.

The anti-bribery provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining any improper commercial advantage, e.g., obtaining or retaining business for or with, or directing business to, any person. This also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

### III. **ENFORCEMENT**

The Foreign Corrupt Practices Act is jointly enforced by the Department of Justice and the Securities and Exchange Commission.


### IV. **APPLICABILITY**

This policy statement applies to Company officers, directors, employees, representatives and agents worldwide.

### V. **ANTI-BRIBERY PROVISIONS**

The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. With respect to the basic prohibition, there are five elements which must be met to constitute a violation of the Act:

**1. Who** - The FCPA potentially applies to any U.S. citizen or permanent resident and to any firm, officer, director, employee, or agent of a U.S. firm and any stockholder acting on behalf of a U.S. firm. Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate

|   |                                      |                                     |
|---|--------------------------------------|-------------------------------------|
|  | <b>Date:</b><br>05/13/2014           | <b>Revision Number:</b><br>1        |
|   | <b>Effective Date:</b><br>05/13/2014 | <b>Page Numbers:</b><br>Page 2 of 4 |
| <b>The U.S. Foreign Corrupt Practices Act Policy and Procedures</b>               |                                      |                                     |

the anti-bribery provisions or if they conspire to violate those provisions.

A foreign company or person is also subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States.

Finally, U.S. parent corporations may be held liable for the acts of foreign subsidiaries where they authorized, directed, controlled or knew of the activity in question, as can U.S. citizens or residents who were employed by or acting on behalf of such foreign-incorporated subsidiaries.

**2. Corrupt intent** - The person making or authorizing the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his official position to direct business wrongfully to the payer or to any other person. Note that the FCPA does not require that a corrupt act succeed in its purpose. The offer or promise of a corrupt payment can constitute a violation of the statute.

**3. Payment** - The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value.

**4. Recipient** - The prohibition extends only to corrupt payments to a foreign official, a foreign political party or party official, or any candidate for foreign political office. A "foreign official" means any officer or employee of a foreign government, a public international organization (e.g., the United Nations or World Bank), or any department or agency thereof, or any person acting in an official capacity. This would include organizations, such as oil and gas or drilling companies owned (even partially owned) by a foreign government.


The FCPA applies to payments to any public official, regardless of rank or position. The FCPA focuses on the purpose of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment. There are exceptions to the anti-bribery provisions for "facilitating payments for routine governmental action". Any questions concerning this should be brought to the attention of the compliance group or legal department.

**5. Business Purpose Test** - The FCPA prohibits payments made in order to assist the company in obtaining or retaining business for or with, or directing business to, any person. This has been interpreted broadly by the Courts to include bribes paid to reduce taxes or Customs duties. Thus, any bribe paid to a government official for a business-related purpose is likely prohibited by the FCPA.

## VI. **ACCOUNTING PROVISIONS**

The FCPA requires that companies whose stock is publicly traded in the U.S:

1. Make and keep books, records, and accounts, which, *in reasonable detail, accurately and fairly* reflect the transactions and dispositions of corporate assets; and
2. Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that,
  - a) all transactions are executed in accordance with management's general or specific authorization;

|   |                                      |                                     |
|---|--------------------------------------|-------------------------------------|
|  | <b>Date:</b><br>05/13/2014           | <b>Revision Number:</b><br>1        |
|   | <b>Effective Date:</b><br>05/13/2014 | <b>Page Numbers:</b><br>Page 3 of 4 |
| <b>The U.S. Foreign Corrupt Practices Act Policy and Procedures</b>               |                                      |                                     |

- b) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, and to maintain accountability for assets;
- c) access to assets is permitted only in accordance with management's general or specific authorization; and
- d) the recorded accountability for assets is compared with existing assets at reasonable intervals, and appropriate action is taken with respect to any difference.

## VII. **PROCEDURES**

### **Prohibited Payments**

It is a felony under the FCPA for the Company, any of its employees, or anyone acting on its behalf, to give, offer, promise, or authorize a payment or anything of value to foreign government official, foreign political party or official thereof, or any candidate for foreign political office, in connection with obtaining or retaining business for the Company, or obtaining any improper commercial advantage.

The FCPA also makes it a felony to pay money or anything of values to an agent, sales representative, or consultant when there is knowledge or belief that the payment will be used to corruptly influence a foreign government official in connection with business the Company is attempting to obtain or retain. Political contributions will not be made by or on behalf of the Company in foreign countries.

### **Permissible Payments**

The FCPA contains an explicit exception to the bribery prohibition for "facilitating payments" for "routine governmental action" and provides affirmative defenses that can be used to defend against alleged violations of the FCPA.

**Facilitating Payments for Routine Governmental Actions** – “Facilitating payments” made for “routine governmental action” to low-level government employees may be permissible in certain circumstances where the governmental action or assistance sought is proper for the Company to receive; the payments are customary in the country where made, are immaterial in amount; are paid to a clerical or ministerial government employee; and there is no reasonable alternative to making the payment.

The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products; and scheduling inspections associated with contract performance or transit of goods across country. Actions "similar" to these are also covered by this exception.

Facilitating payments must be strictly controlled and will only be made in accordance with the local custom and practice. Prior approval must be obtained from Company management.

**Affirmative defenses** – (i) It is an affirmative defense that the payment, gift, offer or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expense, incurred by or on behalf of a Foreign Official, and was directly related to either the promotion, demonstration or explanation of products or services or the execution or performance of a



**Date:**  
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**Revision Number:**  
1

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05/13/2014

**Page Numbers:**  
Page 4 of 4

## **The U.S. Foreign Corrupt Practices Act Policy and Procedures**

contract with a foreign government or agency thereof. (ii) It is an affirmative defense that the payment, gift, offer or promise of something of value was lawful under the written laws and regulations of the Foreign Official's country. As a practical and legal matter, this second affirmative defense is useless.

### **Gifts**

No gifts intended to corruptly influence any business dealing in which the Company is involved may be given to any Foreign Officials. If an exchange of gifts is both legal and normal practice, the Company may provide that gift with the prior approval of Company management.

### **Entertainment**

Entertainment expenditures made for a foreign official will violate the FCPA where such payments are made "corruptly," that is, with the intent wrongfully to influence the actions of the official. Only, modest expenditures made to elicit a general, favorable image of the company may not violate the FCPA. Entertainment expenditures require prior approval of Company management.

### **Political Contributions**

No political contribution can be made without obtaining the prior approval of Company management even if such contributions are permitted under the written local law of such country.

### **Charitable Contribution**

No charitable contribution can be made without prior approval of Company management.

### **Reporting Violations**

If you suspect or believe that a violation of this policy has occurred, you should report it to DNOW's compliance group or legal department. Upon receipt, the compliance group and the legal department will determine whether a violation has occurred and take the appropriate steps.

### **Annual Statement of Compliance**

Annually, DNOW will require its officers, directors, employees, representatives and agents to submit a statement of compliance.