INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
ICDR CASE NO. 01-21-0004-1048

GCCIX, W.L.L.

And

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

INDEX OF EXHIBITS SUBMITTED WITH ICANN'S RESPONSE TO SECOND AMENDED IRP REQUEST

Exhibit	Description
R-1	Bylaws for Internet Corporation for Assigned Names and Numbers (as amended 11 April 2013)
R-2	ICANN Approved Board Resolutions | Singapore (20 June 2011)
R-3	GNSO Final Report on Introduction of New Generic Top-Level Domains (8 August 2007)
R-4	ICANN Adopted Board Resolutions | Paris (26 June 2008)
R-5	ICANN gTLD Applicant Guidebook (4 June 2012)
R-6	ICANN | Archives, Applicant Guidebook (24 October 2008)
R-7	ICANN New gTLD Program Statistics
R-8	ICANN New gTLD Program Application Comments
R-9	GAC Early Warning – Submittal GCC-AE-21010 (20 November 2012)
R-10	Gulf Cooperation Council v. GCCIX W.L.L. Legal Rights Objection (without annexes) (13 March 2013)
R-11	GAC Communiqué – Beijing, People's Republic of China (11 April 2013)
R-12	GCCIX W.L.L. GAC Advice Response Form
R-13	Letter from S. Crocker (ICANN) to H. Dryden (GAC) (10 May 2013)

Exhibit	Description
R-14	NGPC Progress on GAC Advice (10 May 2013)
R-15	Minutes | New gTLD Program Committee (4 June 2013)
R-16	Annex 1 to NGPC Resolution No. 2013.06.04.NG01 (4 June 2013)
R-17	Approved Resolution | Meeting of the New gTLD Program Committee (4 June 2013)
R-18	GCCIX W.L.L. Request for Reconsideration 13-17 (14 November 2013)
R-19	Recommendation of the Board Governance Committee (BGC), Reconsideration Request 13-17 (8 January 2014)
R-20	Approved Resolutions | Meeting of the New gTLD Program Committee (30 January 2014)
R-21	Cooperative Engagement and Independent Review Processes Status Update (18 May 2021)
R-22	*DotConnectAfrica Trust v. ICANN*, Final Declaration (9 July 2015)
R-23	Approved Board Resolutions | Special Meeting of the ICANN Board (16 July 2015)
R-24	Approved Board Resolutions | Regular Meeting of the ICANN Board (29 October 2017)
R-25	Approved Board Resolutions | Regular Meeting of the ICANN Board (12 September 2021)
R-26	Bylaws for Internet Corporation for Assigned Names and Numbers (as amended 28 November 2019)
R-27	Letter from G. Marby (ICANN) to M. Ismail (GAC) (9 November 2021)
R-28	Letter from M. Ismail (GAC) to G. Marby (ICANN) (25 January 2022)
R-29	Approved Board Resolutions | Regular Meeting of the ICANN Board (12 June 2022)
R-30	Approved Resolutions | Regular Meeting of the ICANN Board (30 April 2023)
R-31	Email from E. Enson to M. Rodenbaugh (16 September 2022)

Exhibit	Description
R-32	Letter from E. Enson to M. Rodenbaugh (13 April 2023)
R-33	ICANN's Response to Claimant's Motion to Compel (11 November 2022)
R-34	Bylaws for Internet Corporation for Assigned Names and Numbers (as amended 2 June 2022)
R-35	*Booking.com v. ICANN*, Final Declaration (3 March 2015)
R-36	WIPO Rules for New gTLD Dispute Resolution (20 June 2011)
R-37	Letter from WIPO Arbitration and Mediation Center to Board Governance Committee (20 November 2013)
R-38	ICANN | GNSO, PDP Protection of IGO and INGO Identifiers in All gTLDs (24 September 2020)
LEGAL AUTHORITIES	
RLA-1	*Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n*, 21 Cal. 4th 249 (1999)
RLA-2	*Lee v. Interinsurance Exch., of the Auto. Club of S. Cal.*, 50 Cal. App. 4th 694 (1996)

Ex. R-1

RESPONDENT'S EXHIBIT

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

Note: this page is an archive of an old version of the bylaws. The current ICANN (Internet Corporation for Assigned Names and Numbers) bylaws are always available at:
https://www.icann.org/resources/pages/governance/bylaws-en (/resources/pages/governance/bylaws-en)

As amended 11 April 2013

TABLE OF CONTENTS

ARTICLE I: MISSION AND CORE VALUES
ARTICLE II: POWERS
ARTICLE III: TRANSPARENCY
ARTICLE IV: ACCOUNTABILITY AND REVIEW
ARTICLE V: OMBUDSMAN
ARTICLE VI: BOARD OF DIRECTORS
ARTICLE VII: NOMINATING COMMITTEE
ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION
ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION
ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION
ARTICLE XI: ADVISORY COMMITTEES
ARTICLE XI-A: OTHER ADVISORY MECHANISMS
ARTICLE XII: BOARD AND TEMPORARY COMMITTEES
ARTICLE XIII: OFFICERS
ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS
ARTICLE XV: GENERAL PROVISIONS
ARTICLE XVI: FISCAL MATTERS
ARTICLE XVII: MEMBERS
ARTICLE XVIII: OFFICES AND SEAL
ARTICLE XIX: AMENDMENTS
ARTICLE XX: TRANSITION ARTICLE

ANNEX A: GNSO (Generic Names Supporting Organization) POLICY DEVELOPMENT PROCESS
ANNEX B: ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS (ccPDP)
ANNEX C: THE SCOPE OF THE ccNSO (Country Code Names Supporting Organization)

ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN (Internet Corporation for Assigned Names and Numbers)") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN (Internet Corporation for Assigned Names and Numbers):

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are

   a. Domain names (forming a system referred to as "DNS (Domain Name System)");

   b. Internet protocol ("IP (Internet Protocol or Intellectual Property)") addresses and autonomous system ("AS (Autonomous System (“AS”) Numbers)") numbers; and

   c. Protocol (Protocol) port and parameter numbers.

2. Coordinates the operation and evolution of the DNS (Domain Name System) root name server system.

3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to those matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned

> Names and Numbers)'s effectiveness.
>
> 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN (Internet Corporation for Assigned Names and Numbers) body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board. With respect to any matters that would fall within the provisions of Article III, Section 6, the Board may act only by a majority vote of all members of the Board. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of those present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

Section 2. RESTRICTIONS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations (Supporting Organizations), and Advisory Committees (Advisory Committees); (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN (Internet Corporation for Assigned Names and Numbers)'s budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN (Internet Corporation for Assigned Names and Numbers)

activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (ix) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned Names and Numbers), including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 5. MINUTES AND PRELIMINARY REPORTS

> 1. All minutes of meetings of the Board and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary for posting on the Website.
>
> 2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for

Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (Supporting Organizations) (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (Advisory Committees) (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.

3. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 5.2 above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

4. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes shall be made publicly available on the Website; provided, however, that any minutes relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

1. With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN (Internet Corporation for Assigned Names and Numbers) shall:

a. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;

b. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments, prior to any action by the Board; and

c. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee (Advisory Committee) and take duly into account any advice timely presented by the Governmental Advisory Committee (Advisory Committee) on its own initiative or at the Board's request.

2. Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 6(1)(b) of this Article, prior to any final Board action.

3. After taking action on any policy subject to this Section, the Board shall publish in the meeting minutes the reasons for any action taken, the vote of each Director voting on the action, and the separate statement of any Director desiring publication of such a statement.

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN (Internet Corporation for Assigned Names and Numbers) should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN (Internet Corporation for Assigned Names and Numbers) actions and periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action of ICANN (Internet Corporation for Assigned Names and Numbers) may request review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

    a. one or more staff actions or inactions that contradict established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies); or

    b. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

c. one or more actions or inactions of the ICANN (Internet Corporation for Assigned Names and Numbers) Board that are taken as a result of the Board's reliance on false or inaccurate material information.

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

    a. evaluate requests for review or reconsideration;

    b. summarily dismiss insufficient requests;

    c. evaluate requests for urgent consideration;

    d. conduct whatever factual investigation is deemed appropriate;

    e. request additional written submissions from the affected party, or from other parties;

    f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and

    g. make a recommendation to the Board of Directors on the merits of the request, as necessary.

4. ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.

5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:

a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or

b. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or

c. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website. at http://www.icann.org/en/groups/board/governance/reconsideration (/en/groups/board/governance/reconsideration). Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to

demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.

10. For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.

11. The Board Governance Committee may ask the ICANN (Internet Corporation for Assigned Names and Numbers) staff for its views on the matter, which comments shall be made publicly available on the Website.

12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.

14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and by any third party.

15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.

16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website.

17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website. The Board's decision on the recommendation is final.

18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN (Internet Corporation for Assigned Names and Numbers)'s headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

19. The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

    a. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;

    b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any request pending for more than ninety (90) days;

c. an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and

d. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (Internet Corporation for Assigned Names and Numbers) decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article (/en/about/governance/bylaws#IV-2), ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.

3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN (Internet Corporation for Assigned Names and Numbers) violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the

circumstances of the requests and the harm is the same for each of the requesting parties.

4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

    a. did the Board act without conflict of interest in taking its decision?;

    b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and

    c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN (Internet Corporation for Assigned Names and Numbers)'s response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.

6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the

ICANN (Internet Corporation for Assigned Names and Numbers) structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN (Internet Corporation for Assigned Names and Numbers).

8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3 (/en/about/governance/bylaws#IV-3).

9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.

10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.

11. The IRP Panel shall have the authority to:

    a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;

    b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations (Supporting Organizations), or from other parties;

c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;

e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and

f. determine the timing for each proceeding.

12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.

13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.

14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN (Internet Corporation for Assigned Names and Numbers) for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN (Internet Corporation for Assigned Names and Numbers).org and is incorporated into this Section 3 of the Bylaws.

15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of

the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the request for independent review, the IRP Panel must award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) in the proceeding, including legal fees.

17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.

18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN (Internet Corporation for Assigned Names and Numbers)'s website when they become available.

20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.

21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

1. The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (Advisory Committee)), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN (Internet Corporation for Assigned Names and Numbers) structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all members of the Board.

2. The Governmental Advisory Committee (Advisory Committee) shall provide its own review mechanisms.

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN (Internet Corporation for Assigned Names and Numbers) budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN (Internet Corporation for Assigned Names and Numbers) budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in Section 2 of Article IV or the Independent Review Policy set forth in Section 3 of Article IV have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve

complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;

2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN (Internet Corporation for Assigned Names and Numbers)'s interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;

3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN (Internet Corporation for Assigned Names and Numbers) staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN (Internet Corporation for Assigned Names and Numbers));

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and

6. comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

1. No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

2. ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

3. Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to

any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, staff, or constituent bodies.

Section 5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board") shall consist of sixteen voting members ("Directors"). In addition, five non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in Section 9 of this Article. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1. The Directors shall consist of:

a. Eight voting members selected by the Nominating Committee established by Article VII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.

b. Two voting members selected by the Address Supporting Organization (Supporting Organization) according to the provisions of Article VIII of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 9 and Seat 10.

c. Two voting members selected by the Country-Code Names Supporting Organization (Supporting Organization) according to the provisions of Article IX of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 11 and Seat 12.

d. Two voting members selected by the Generic Names Supporting Organization (Supporting Organization) according to the provisions of Article X of these Bylaws. These seats on the Board of Directors are referred to in these Bylaws as Seat 13 and Seat 14.

e. One voting member selected by the At-Large Community according to the provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.

f. The President ex officio, who shall be a voting member.

2. In carrying out its responsibilities to fill Seats 1 through 8, the Nominating Committee shall seek to ensure that the ICANN (Internet Corporation for Assigned Names and Numbers) Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 3 of this Article. At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in Section 5 of this Article) to exceed five; and the

Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region ("Diversity Calculation").

For purposes of this sub-section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub- section 2 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

3. In carrying out their responsibilities to fill Seats 9 through 15, the Supporting Organizations (Supporting Organizations) and the At-Large Community shall seek to ensure that the ICANN (Internet Corporation for Assigned Names and Numbers) Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 3 of this Article. At any given time, no two Directors selected by a Supporting Organization (Supporting Organization) shall be citizens from the same country or of countries located in the same Geographic Region.

For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization (Supporting Organization) or the At-Large Community to use for selection purposes. For purposes of this sub-section 3 of Article VI, Section 2 of the ICANN (Internet

Corporation for Assigned Names and Numbers) Bylaws, a person can only have one "Domicile," which shall be determined by where the candidate has a permanent residence and place of habitation.

4. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN (Internet Corporation for Assigned Names and Numbers) Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

2. Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

3. Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section;

4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet;

5. Persons who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

6. Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

1. Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

2. No person who serves in any capacity (including as a liaison) on any Supporting Organization (Supporting Organization) Council shall simultaneously serve as a Director or liaison to the Board. If such a person accepts a nomination to be considered for selection by the Supporting Organization (Supporting Organization) Council or the At-Large Community to be a Director, the person shall not, following such nomination, participate in any discussion of, or vote by, the Supporting Organization (Supporting Organization) Council or the committee designated by the At-Large Community relating to the selection of Directors by the Council or Community, until the Council or committee(s) designated by the At-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization (Supporting Organization) Council accepts a nomination to be considered for selection as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the At-Large Advisory Committee (Advisory Committee) accepts a nomination to be considered for selection by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the Community's selection process.

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by

> Article VII, Section 8.

Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee, each Supporting Organization (Supporting Organization) and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization (Supporting Organization). One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization (Supporting Organization) conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN (Internet Corporation for Assigned Names and Numbers) and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:

a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2003 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;

b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2004 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;

c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2005 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2015 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;

e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2013 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2013; and

f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2014 and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2014.

2. Each Director holding any of Seats 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.

3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its selection of Directors for seats with terms beginning at the conclusion of the annual meeting.

4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1.d-f above, any Supporting Organization (Supporting Organization) or the At-Large community entitled to select a Director for a Seat with a term beginning that year shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its selection.

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be

deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)

6. The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

a. One appointed by the Governmental Advisory Committee (Advisory Committee);

b. One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

c. One appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

d. One appointed by the Technical Liaison Group established by Article XI-A of these Bylaws;

e. One appointed by the Internet Engineering Task Force.

2. Subject to the provisions of the Transition Article of these Bylaws, the non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of its appointment.

3. Non-voting liaisons shall serve as volunteers, without compensation other than the reimbursement of certain expenses.

4. Each non-voting liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.

5. The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBCL, any Director or non-voting liaison may resign at any time, either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers)) or by giving written notice thereof to the President or the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to Section 12 of this Article.

Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

1. Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization (Supporting Organization), notice must be provided to that Supporting Organization (Supporting Organization) at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory

Committee (Advisory Committee) at the same time notice is provided to the Director.

2. With the exception of the non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee), any non-voting liaison may be removed, following notice to that liaison and to the organization by which that liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the Governmental Advisory Committee (Advisory Committee) to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization (Supporting Organization), in which case that vacancy shall be filled by that Supporting Organization (Supporting Organization), or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of Article XIII of these Bylaws. The selecting body shall give written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

> 2. The organizations selecting the non-voting liaisons identified in Section 9 of this Article are responsible for determining the existence of, and filling, any vacancies in those positions. They shall give the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting for ICANN (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers). In the absence of designation, special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and non-voting liaison, or sent by first-class mail (air mail for addresses outside the United States) or

facsimile, charges prepaid, addressed to each Director and non-voting liaison at the Director's or non-voting liaison's address as it is shown on the records of ICANN (Internet Corporation for Assigned Names and Numbers). In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section to the contrary, notice of a meeting need not be given to any Director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN (Internet Corporation for Assigned Names and Numbers) adopts

and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN (Internet Corporation for Assigned Names and Numbers) shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 20. ELECTRONIC MAIL

If permitted under applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN (Internet Corporation for Assigned Names and Numbers) shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

> 1. Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), who serves ex officio as a voting

member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.

2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN (Internet Corporation for Assigned Names and Numbers) for services to ICANN (Internet Corporation for Assigned Names and Numbers) as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.

3. As part of the process, the Board shall retain an Independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses

incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

7. As used in this Section 22, the following terms shall have the following meanings:

(a) An "Independent Valuation Expert" means a person retained by ICANN (Internet Corporation for Assigned Names and Numbers) to value compensation arrangements that: (i) holds itself out to the public as a compensation consultant; (ii) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN (Internet Corporation for Assigned Names and Numbers); (iii) is qualified to make valuations of the type of services involved in any engagement by and for ICANN (Internet Corporation for Assigned Names and Numbers); (iv) issues to ICANN (Internet Corporation for Assigned Names and Numbers) a Reasoned Written Opinion regarding a particular compensation arrangement; and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.

(b) A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN (Internet Corporation for Assigned Names and Numbers) to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable

> standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.
>
> (c) "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

Section 23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

There shall be a Nominating Committee of ICANN (Internet Corporation for Assigned Names and Numbers), responsible for the selection of all ICANN (Internet Corporation for Assigned Names and Numbers) Directors except the President and those Directors selected by ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), and for such other selections as are set forth in these Bylaws.

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

> 1. A non-voting Chair, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board;

2. A non-voting Chair-Elect, appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board as a non-voting advisor;

3. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Root Server System Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

5. A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);

6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Article XI of these Bylaws;

7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization (Supporting Organization), established by Article X of these Bylaws, as follows:

a. One delegate from the Registries Stakeholder Group;

b. One delegate from the Registrars Stakeholder Group;

c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;

d. One delegate from the Internet Service Providers Constituency;

e. One delegate from the Intellectual Property Constituency; and

f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

8. One voting delegate each selected by the following entities:

a. The Council of the Country Code Names Supporting Organization (Supporting Organization) established by Article IX of these Bylaws;

b. The Council of the Address Supporting Organization (Supporting Organization) established by Article VIII of these Bylaws;

c. The Internet Engineering Task Force; and

d. The ICANN (Internet Corporation for Assigned Names and Numbers) Technical Liaison Group established by Article XI-A of these Bylaws;

9. A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 3. TERMS

Subject to the provisions of the Transition Article of these Bylaws:

1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

2. The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article, or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.

6. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;

5. Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'s activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

In carrying out its responsibilities to select members of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and such other bodies), and seek to ensure that the persons selected to fill vacancies on the ICANN (Internet Corporation for Assigned Names and Numbers) Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by Section 4 of this Article, make selections guided by Core Value 4 in Article I, Section 2 .

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for selection by any means to any position on the Board or any other ICANN (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (Internet Corporation for Assigned Names and Numbers) (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 2 of this Article.

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

> 1. The Address Supporting Organization (Supporting Organization) (ASO (Address Supporting Organization)) shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.
>
> 2. The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization (NRO (Number Resource Organization)), an organization of the existing regional Internet registries (RIRs).

Section 2. ADDRESS COUNCIL

1. The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.

2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO (Address Supporting Organization).

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (Supporting Organization) (ccNSO (Country Code Names Supporting Organization)), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;

2. Nurturing consensus across the ccNSO (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs; and

3. Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers).

Policies that apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO (Country Code Names Supporting Organization) may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and

technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (i) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be members of the ccNSO (Country Code Names Supporting Organization) (see Section 4(2) of this Article) and (ii) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 3. ccNSO (Country Code Names Supporting Organization) COUNCIL

1. The ccNSO (Country Code Names Supporting Organization) Council shall consist of (a) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 4(7) through (9) of this Article; (b) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee; (c) liaisons as described in paragraph 2 of this Section; and (iv) observers as described in paragraph 3 of this Section.

2. There shall also be one liaison to the ccNSO (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee (Advisory Committee); (b) the At-Large Advisory Committee (Advisory Committee); and (c) each of the Regional Organizations described in Section 5 of this Article. These liaisons shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers)

Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

3. The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

4. Subject to the provisions of the Transition Article of these Bylaws: (a) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (b) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (c) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the

Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

5. A ccNSO (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

6. ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive meetings of the ccNSO (Country Code Names Supporting Organization) Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council.

7. A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) members shall be filled for the unexpired term by the procedure described in Section 4(7) through (9) of this Article.

8. The role of the ccNSO (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) members as

described in Section 4(6) of this Article) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

9. The ccNSO (Country Code Names Supporting Organization) Council shall make selections to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's selections shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

10. The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

11. The ccNSO (Country Code Names Supporting Organization) Council, subject to direction by the ccNSO (Country Code Names Supporting Organization) members, shall adopt such rules and procedures for the ccNSO (Country Code Names Supporting Organization) as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO (Country Code Names Supporting

Organization) membership and operating procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council shall be published on the Website.

12. Except as provided by paragraphs 9 and 10 of this Section, the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) Council members are permitted to participate by at least one means described in paragraph 14 of this Section. Except where determined by a majority vote of the members of the ccNSO (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

13. Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO (Country Code Names Supporting Organization) Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

14. Members of the ccNSO (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO

(Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (a) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (b) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (c) there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 4. MEMBERSHIP

1. The ccNSO (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in paragraph 2 of this Section shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing an ISO (International Organization for Standardization) 3166 country-code top-level domain and referred to in the IANA (Internet Assigned Numbers Authority) database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (a) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (a) adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (b) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 7(3) of this Article. In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO (Country Code Names Supporting Organization) nor membership in any Regional Organization described in Section 5 of this Article shall be a condition for access to or registration in the IANA (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

4. The Geographic Regions of ccTLDs shall be as described in Article VI, Section 5 of these Bylaws. For purposes of this Article, managers of ccTLDs within a Geographic Region that are members of the ccNSO (Country Code Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

5. Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager. In the absence of such a designation, the ccTLD (Country Code Top Level Domain) manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database.

6. There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the

meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

7. The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members from each Geographic Region (see Section 3(1)(a) of this Article) shall be selected through nomination, and if necessary election, by the ccNSO (Country Code Names Supporting Organization) members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

8. Any ccNSO (Country Code Names Supporting Organization) member may nominate an individual to serve as a ccNSO (Country Code Names Supporting Organization) Council member representing the ccNSO (Country Code Names Supporting Organization) member's Geographic Region. Nominations must be seconded by another ccNSO (Country Code Names Supporting Organization) member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO (Country Code Names Supporting Organization) Council agree to support the policies committed to by ccNSO (Country Code Names Supporting Organization) members.

9. If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council.

Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO (Country Code Names Supporting Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO (Country Code Names Supporting Organization) members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

10. Subject to clause 4(11), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership to the extent, and only to the extent, that the policies (a) only address issues that are within scope of the ccNSO (Country Code Names Supporting Organization) according to Article IX, Section 6 and Annex C; (b) have been developed through the ccPDP as described in Section 6 of this Article, and (c) have been recommended as such by the ccNSO (Country Code Names Supporting Organization) to the Board, and (d) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

11. A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section), and (b) failure to implement the policy would not impair DNS (Domain Name System) operations or

> interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (a) whether the ccNSO (Country Code Names Supporting Organization) members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in paragraph 10 of this Section) and (b) whether failure to implement the policy would impair DNS (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

2. Upon request of the ccNSO (Country Code Names Supporting Organization) Council, ICANN (Internet Corporation for Assigned

Names and Numbers) shall provide administrative and operational support necessary for the ccNSO (Country Code Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by ccNSO (Country Code Names Supporting Organization) participants for travel to any meeting of the ccNSO (Country Code Names Supporting Organization) or for any other purpose. The ccNSO (Country Code Names Supporting Organization) Council may make provision, at ccNSO (Country Code Names Supporting Organization) expense, for administrative and operational support in addition or as an alternative to support provided by ICANN (Internet Corporation for Assigned Names and Numbers).

3. The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in paragraphs 1 and 2 of this Section, as approved by the ccNSO (Country Code Names Supporting Organization) members.

4. Written notices given to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The ICANN (Internet Corporation for Assigned Names and Numbers) Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) manager's designated representative, and which shall be posted on the Website.

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (Supporting Organization) (GNSO (Generic Names Supporting Organization)), which shall be responsible for developing and

recommending to the ICANN (Internet Corporation for Assigned Names and Numbers) Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of:

> (i) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 5 of this Article;
>
> (ii) Four Stakeholder Groups organized within Houses as described in Section 5 of this Article;
>
> (iii) Two Houses within the GNSO (Generic Names Supporting Organization) Council as described in Section 3(8) of this Article; and
>
> (iv) a GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), as described in Section 3 of this Article.

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

Section 3. GNSO (Generic Names Supporting Organization) COUNCIL

> 1. Subject to the provisions of Transition Article XX, Section 5 of these Bylaws and as described in Section 5 of Article X, the GNSO (Generic Names Supporting Organization) Council shall consist of:
>
> > a. three representatives selected from the Registries Stakeholder Group;
> >
> > b. three representatives selected from the Registrars Stakeholder Group;

c. six representatives selected from the Commercial Stakeholder Group;

d. six representatives selected from the Non-Commercial Stakeholder Group; and

e. three representatives selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in Section 3(8) of this Article) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO (Generic Names Supporting Organization) Council at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO (Generic Names Supporting Organization) Council is as diverse as possible and practicable, including considerations of geography, GNSO (Generic Names Supporting Organization) Constituency, sector, ability and gender.

There may also be liaisons to the GNSO (Generic Names Supporting Organization) Council from other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and/or Advisory Committees (Advisory Committees), from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO (Generic Names Supporting Organization) Council, but otherwise liaisons shall

be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council.

2. Subject to the provisions of the Transition Article XX, and Section 5 of these Bylaws, the regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO (Generic Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

3. A vacancy on the GNSO (Generic Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO (Generic Names Supporting Organization) Council member selected by the Nominating Committee may be removed for cause: i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 3(8) of this Article). Such removal shall be subject to reversal by the ICANN (Internet Corporation for Assigned Names and Numbers) Board on appeal by the affected GNSO (Generic Names Supporting Organization) Council member.

4. The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures (the "GNSO (Generic Names Supporting Organization) Operating Procedures") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO (Generic Names Supporting Organization) Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO (Generic Names Supporting Organization) Council, the applicable procedures shall be as set forth in Section 6 of this Article.

5. No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO (Generic Names Supporting Organization) Council at any given time.

6. The GNSO (Generic Names Supporting Organization) shall make selections to fill Seats 13 and 14 on the ICANN (Internet Corporation for Assigned Names and Numbers) Board by written ballot or by action

at a meeting. Each of the two voting Houses of the GNSO (Generic Names Supporting Organization), as described in Section 3(8) of this Article, shall make a selection to fill one of two ICANN (Internet Corporation for Assigned Names and Numbers) Board seats, as outlined below; any such selection must have affirmative votes compromising sixty percent (60%) of all the respective voting House members:

> a. the Contracted Party House shall select a representative to fill Seat 13; and
>
> b. the Non-Contracted Party House shall select a representative to fill Seat 14

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

7. The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. Each House (as described in Section 3.8 of this Article) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO (Generic Names Supporting Organization) Council, for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO (Generic Names Supporting Organization) Operating Procedures. In the event that the GNSO (Generic Names Supporting Organization) Council has not elected a GNSO (Generic Names Supporting Organization) Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO (Generic Names Supporting Organization) Co-Chairs until a successful election can be held.

8. Except as otherwise required in these Bylaws, for voting purposes, the GNSO (Generic Names Supporting Organization) Council (see Section 3(1) of this Article) shall be organized into a bicameral House structure as described below:

> a. the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee for a total of seven voting members; and
>
> b. the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO (Generic Names Supporting Organization) Council.

9. Except as otherwise specified in these Bylaws, Annex A hereto, or the GNSO (Generic Names Supporting Organization) Operating Procedures, the default threshold to pass a GNSO (Generic Names Supporting Organization) Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO (Generic Names Supporting Organization) actions:

> a. Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
>
> b. Initiate a Policy Development Process ("PDP (Policy Development Process)") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

c. Initiate a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of GNSO (Generic Names Supporting Organization) Supermajority.

d. Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

e. Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

f. Changes to an Approved PDP (Policy Development Process) Team Charter: For any PDP (Policy Development Process) Team Charter approved under d. or e. above, the GNSO (Generic Names Supporting Organization) Council may approve an amendment to the Charter through a simple majority vote of each House.

g. Terminate a PDP (Policy Development Process): Once initiated, and prior to the publication of a Final Report, the GNSO (Generic Names Supporting Organization) Council may terminate a PDP (Policy Development Process) only for significant cause, upon a motion that passes with a GNSO (Generic Names Supporting Organization) Supermajority Vote in favor of termination.

h. Approve a PDP (Policy Development Process) Recommendation Without a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO (Generic Names Supporting Organization) Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

i. Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

j. Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

k. Modification of Approved PDP (Policy Development Process) Recommendation: Prior to Final Approval by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, an Approved PDP (Policy Development Process) Recommendation may be modified or amended by the GNSO (Generic Names Supporting Organization) Council with a GNSO (Generic Names Supporting Organization) Supermajority vote.

l. A "GNSO (Generic Names Supporting Organization) Supermajority" shall mean: (a) two-thirds (2/3) of the Council members of each House, or (b) three-fourths (3/4) of one House and a majority of the other House."

Section 4. STAFF SUPPORT AND FUNDING

1. A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager (Staff Manager).

2. ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting

Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 5. STAKEHOLDER GROUPS

1. The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the Transition Article XX, Section 5 of these Bylaws:

a. Registries Stakeholder Group representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

b. Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);

c. Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet; and

d. Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

2. Each Stakeholder Group is assigned a specific number of Council seats in accordance with Section 3(1) of this Article.

3. Each Stakeholder Group identified in paragraph 1 of this Section and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder

Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

4. Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

a. A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO (Generic Names Supporting Organization) to carry out its policy-development responsibilities;

b. A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;

c. A recommendation for organizational placement within a particular Stakeholder Group; and

d. A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

5. The Board may create new Constituencies as described in Section 5(3) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN (Internet Corporation for Assigned Names and Numbers). In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO (Generic Names Supporting Organization) Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO (Generic Names Supporting Organization) shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 3(4) of this Article.

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

The Board may create one or more Advisory Committees (Advisory Committees) in addition to those set forth in this Article. Advisory Committee (Advisory Committee) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees (Advisory Committees):

1. Governmental Advisory Committee (Advisory Committee)

   a. The Governmental Advisory Committee (Advisory Committee) should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues.

   b. Membership in the Governmental Advisory Committee (Advisory Committee) shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental

organizations and treaty organizations, on the invitation of the Governmental Advisory Committee (Advisory Committee) through its Chair.

c. The Governmental Advisory Committee (Advisory Committee) may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.

d. The chair of the Governmental Advisory Committee (Advisory Committee) shall be elected by the members of the Governmental Advisory Committee (Advisory Committee) pursuant to procedures adopted by such members.

e. Each member of the Governmental Advisory Committee (Advisory Committee) shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

f. The Governmental Advisory Committee (Advisory Committee) shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

g. The Governmental Advisory Committee (Advisory Committee) may designate a non-voting liaison to each of the Supporting Organization (Supporting Organization) Councils and Advisory Committees (Advisory Committees), to the extent the Governmental Advisory Committee (Advisory Committee) deems it appropriate and useful to do so.

h. The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of ICANN (Internet Corporation for Assigned Names and Numbers)'s supporting organizations or advisory committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

i. The Governmental Advisory Committee (Advisory Committee) may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

j. The advice of the Governmental Advisory Committee (Advisory Committee) on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN (Internet Corporation for Assigned Names and Numbers) Board determines to take an action that is not consistent with the Governmental Advisory Committee (Advisory Committee) advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee (Advisory Committee) and the ICANN (Internet Corporation for Assigned Names and Numbers) Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

k. If no such solution can be found, the ICANN (Internet Corporation for Assigned Names and Numbers) Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

2. Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

a. The role of the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("SSAC (Security and Stability Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS (Domain Name System) infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS (Domain Name System) and address allocation and those engaged in operations planning.

2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) and address allocation security in relation to identified risks and threats.

3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these

> activities and inform the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on their progress, as appropriate.
>
> 4. To report periodically to the Board on its activities.
>
> 5. To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The SSAC (Security and Stability Advisory Committee)'s chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. The chair and members may be re-appointed, and there are no limits to the number of terms the chair or members may serve. The SSAC (Security and Stability Advisory Committee) chair may provide recommendations to the Board regarding appointments to the SSAC (Security and Stability Advisory Committee). The SSAC (Security and Stability Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC (Security and Stability Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove SSAC (Security and Stability Advisory Committee) appointees as recommended by or in consultation with the SSAC (Security and Stability Advisory Committee). (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC (Security and Stability Advisory Committee) shall be comprised as stated in the Bylaws as amended 25 June 2010, and the SSAC (Security and Stability Advisory Committee) chair shall recommend the re-appointment of all current SSAC (Security and Stability Advisory Committee) members to full or partial terms as appropriate to implement the provisions of this paragraph.)

c. The SSAC (Security and Stability Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet

Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

3. Root Server System Advisory Committee (Advisory Committee)

a. The role of the Root Server System Advisory Committee (Advisory Committee) ("RSSAC (Root Server System Advisory Committee)") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

1. Communicate on matters relating to the operation of the Root Servers (Root Servers) and their multiple instances with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS (Domain Name System) servers.

2. Communicate on matters relating to the administration of the Root Zone (Root Zone) with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone (Root Zone) File.

3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

4. Respond to requests for information or opinions from the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors.

5. Report periodically to the Board on its activities.

6. Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

b. The RSSAC (Root Server System Advisory Committee) shall be led by two co-chairs. The RSSAC (Root Server System Advisory Committee)'s chairs and members shall be appointed by the Board.

1. RSSAC (Root Server System Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC (Root Server System Advisory Committee) chairs shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee) then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have to power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee). (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015, and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC (Root Server System Advisory Committee) shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC (Root Server System Advisory Committee) chairs shall recommend the re-appointment of all current RSSAC

(Root Server System Advisory Committee) members to full or partial terms as appropriate to implement the provisions of this paragraph.)

2. The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC (Root Server System Advisory Committee) shall annually appoint a non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Board according to Section 9 of Article VI.

4. At-Large Advisory Committee (Advisory Committee)

a. The At-Large Advisory Committee (Advisory Committee) (ALAC (At-Large Advisory Committee)) is the primary organizational home within ICANN (Internet Corporation for Assigned Names and Numbers) for individual Internet users. The role of the ALAC (At-Large Advisory Committee) shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), as well as the many other issues for which community input and advice is appropriate. The ALAC (At-Large Advisory Committee), which plays an important role in ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms, also coordinates some of ICANN (Internet Corporation for Assigned Names and Numbers)'s outreach to individual Internet users.

b. The ALAC (At-Large Advisory Committee) shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph 4(g) of this Section, and (ii) five members selected by the Nominating Committee. The five members selected by the

Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 5 of Article VI.

c. Subject to the provisions of the Transition Article of these Bylaws, the regular terms of members of the ALAC (At-Large Advisory Committee) shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an even-numbered year.

2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an odd-numbered year.

3. The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

4. The regular term of each member shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

d. The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the Committee.

e. The ALAC (At-Large Advisory Committee) shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to Section 5 of Article VI (/en/general/bylaws.htm#VI-5)) to the Nominating Committee.

f. Subject to the provisions of the Transition Article of these Bylaws, the At-Large Advisory Committee (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) Council.

g. There shall be one RALO for each Geographic Region established according to Section 5 of Article VI. Each RALO shall serve as the main forum and coordination point for public input to ICANN (Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.

h. Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) according to paragraph 4(i) of this Section. If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO for each Geographic Region.

2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in Section 5 of Article VI (/en/general/bylaws.htm#VI-5)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.

4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.

5. Once the criteria and standards have been established as provided in this Clause i, the ALAC (At-Large Advisory Committee), with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC (At-Large Advisory Committee) in its Rules of Procedure, save always that any changes made to the Rules of Procedure

in respect of ALS (At-Large Structure) applications shall be subject to review by the RALOs and by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

8. On an ongoing basis, the ALAC (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

j. The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC (At-Large Advisory Committee) Chair in writing to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, consistent with Article VI, Sections 8(4) and 12(1).

2. Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);

3. Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;

4. Promoting outreach activities in the community of individual Internet users;

5. Developing and maintaining on-going information and education programs, regarding ICANN (Internet

Corporation for Assigned Names and Numbers) and its work;

6. Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Region;

7. Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

8. Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and

10. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN (Internet Corporation for Assigned Names and Numbers) decision-making, so interested individuals can share their views on pending ICANN (Internet Corporation for Assigned Names and Numbers) issues.

Section 3. PROCEDURES

Each Advisory Committee (Advisory Committee) shall determine its own rules of procedure and quorum requirements.

Section 4. TERM OF OFFICE

The chair and each member of a committee shall serve until his or her successor is appointed, or until such committee is sooner terminated, or until

he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee.

Section 5. VACANCIES

Vacancies on any committee shall be filled in the same manner as provided in the case of original appointments.

Section 6. COMPENSATION

Committee members shall receive no compensation for their services as a member of a committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by committee members, including Directors, performing their duties as committee members.

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

1. Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

2. Types of Expert Advisory Panels.

a. On its own initiative or at the suggestion of any ICANN (Internet Corporation for Assigned Names and Numbers) body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 1(3)(b) of this Article shall apply.

b. In addition, in accordance with Section 1(3) of this Article, the Board may refer issues of public policy pertinent to matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

a. The Governmental Advisory Committee (Advisory Committee) may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.

b. In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee (Advisory Committee) regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.

c. The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (Advisory Committee) to the multinational governmental or treaty organization.

4. Process for Seeking and Advice-Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 1(2)(a) of this Article shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

5. Receipt of Expert Advice and its Effect. External advice pursuant to this Section shall be provided in written form. Such advice is advisory

and not binding, and is intended to augment the information available to the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

6. Opportunity to Comment. The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees (Advisory Committees), shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 2. TECHNICAL LIAISON GROUP

1. Purpose. The quality of ICANN (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet Corporation for Assigned Names and Numbers)'s relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities.

2. TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI (European Telecommunications Standards Institute)), the International Telecommunications Union's Telecommunication Standardization Sector (ITU (International Telecommunication Union)-T), the World Wide Web Consortium (W3C (World Wide Web Consortium)), and the Internet Architecture Board (IAB (Internet Architecture Board)).

3. Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

a. In response to a request for information, to connect the Board or other ICANN (Internet Corporation for Assigned Names and

Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

b. As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

4. TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

5. Technical Work of the IANA (Internet Assigned Numbers Authority). The TLG shall have no involvement with the IANA (Internet Assigned Numbers Authority)'s work for the Internet Engineering Task Force, Internet Research Task Force, or the Internet Architecture Board, as described in the Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000.

6. Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a specific TLG organization directly.

7. Board Liaison and Nominating Committee Delegate. Annually, in rotation, one TLG organization shall appoint one non-voting liaison to the Board according to Article VI, Section 9(1)(d). Annually, in rotation, one TLG organization shall select one voting delegate to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee according to Article VII, Section 2(8)(j). The rotation order for the appointment of the non-voting liaison to the Board shall be ETSI (European Telecommunications Standards Institute), ITU (International Telecommunication Union)-T, and W3C (World Wide Web Consortium). The rotation order for the selection of the Nominating Committee delegate shall be W3C (World Wide Web Consortium), ETSI (European Telecommunications Standards Institute), and ITU (International Telecommunication Union)-T. (IAB (Internet Architecture Board) does not participate in these rotations because the IETF (Internet Engineering Task Force) otherwise appoints a non-voting liaison to the Board and selects a delegate to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.)

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee.

Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

a. The filling of vacancies on the Board or on any committee;

b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;

c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;

d. The appointment of committees of the Board or the members thereof;

e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;

f. The approval of the annual budget required by Article XVI; or

g. The compensation of any officer described in Article XIII.

2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of Article VI applicable to meetings and actions of the

> Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chairman of the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such

office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN (Internet Corporation for Assigned Names and Numbers) in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio member of the Board, and shall have all the same rights and privileges of any Board member. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN (Internet Corporation for Assigned Names and Numbers). If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN (Internet Corporation for Assigned Names and Numbers). The CFO

shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual budget. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN (Internet Corporation for Assigned Names and Numbers) shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

ICANN (Internet Corporation for Assigned Names and Numbers) shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason

of the fact that any such person is or was an agent of ICANN (Internet Corporation for Assigned Names and Numbers), provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN (Internet Corporation for Assigned Names and Numbers) as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN (Internet Corporation for Assigned Names and Numbers) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN (Internet Corporation for Assigned Names and Numbers) would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN (Internet Corporation for Assigned Names and Numbers), and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans shall be made by or to ICANN (Internet Corporation for Assigned Names and Numbers) and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by ICANN (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses). ICANN (Internet Corporation for Assigned Names and Numbers) shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN (Internet Corporation for Assigned Names and Numbers)'s fiscal year.

Section 4. ANNUAL BUDGET

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board, a proposed annual budget of ICANN (Internet Corporation for Assigned Names and Numbers) for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

Section 5. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XVII: MEMBERS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member"

in these Bylaws, in any ICANN (Internet Corporation for Assigned Names and Numbers) document, or in any action of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XIX: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of ICANN (Internet Corporation for Assigned Names and Numbers) may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, as amended and restated on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm)"), to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws (/en/general/bylaws.htm)"). [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and restated through to 20 March 2009.]

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in paragraph 5 of this Section 2, the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of Article VI, Section 12 of the New Bylaws, vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by Article VI, Section 9 of the New Bylaws. The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.

2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.

3. The "New Board" is that Board described in Article VI, Section 2(1) of the New Bylaws.

4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in Article VII, Section 2 of the New Bylaws, with terms to end at the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in Article VI, Section 8(1)(a)-(c) of the New Bylaws, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of that selection.

5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of

ICANN (Internet Corporation for Assigned Names and Numbers) in 2003 that begins not less than seven calendar days after the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors. Subject to Section 4 of this Article, the Directors (Article VI, Section 2(1)(a)-(d)) and non-voting liaisons (Article VI, Section 9) as to which the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary has received notice of selection shall, along with the President (Article VI, Section 2(1)(e)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary's receipt of notice of their selection.

6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.

7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters, but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership, subject to any change the New Board may adopt by resolution.

8. In applying the term-limitation provision of Section 8(5) of Article VI, a Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization (Supporting Organization) shall continue in operation according to the provisions of the Memorandum of Understanding originally entered on 18 October 1999 (/aso/aso-mou-

26aug99.htm) between ICANN (Internet Corporation for Assigned Names and Numbers) and a group of regional Internet registries (RIRs), and amended in October 2000 (/aso/aso-mou-amend1-25sep00.htm), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization (Supporting Organization) shall make selections, and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of those selections, of:

> 1. Directors to fill Seats 9 and 10 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in Article VI, Section 8(1)(d) and (e) of the New Bylaws; and
>
> 2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization (Supporting Organization), as called for in Article VII, Section 2(8)(f) of the New Bylaws.

With respect to the ICANN (Internet Corporation for Assigned Names and Numbers) Directors that it is entitled to select, and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible, the Address Supporting Organization (Supporting Organization) may select those Directors from among the persons it previously selected as ICANN (Internet Corporation for Assigned Names and Numbers) Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization (Supporting Organization) does not provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice, on or before 31 March 2003, of its selections for Seat 9 and Seat 10, the Address Supporting Organization (Supporting Organization) shall be deemed to have selected for Seat 9 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an ICANN (Internet Corporation for Assigned Names and Numbers) Director pursuant to the Old Bylaws for a term beginning in 2002.

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD (Country Code Top Level Domain) managers (with at least four within each Geographic Region) as members of the ccNSO (Country Code Names Supporting Organization), written notice shall be posted on the Website. As soon as feasible after that notice, the members of the initial ccNSO (Country Code Names Supporting Organization) Council to be selected by the ccNSO (Country Code Names Supporting Organization) members shall be selected according to the procedures stated in Article IX, Section 4(8) and (9). Upon the completion of that selection process, a written notice that the ccNSO (Country Code Names Supporting Organization) Council has been constituted shall be posted on the Website. Three ccNSO (Country Code Names Supporting Organization) Council members shall be selected by the ccNSO (Country Code Names Supporting Organization) members within each Geographic Region, with one member to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. (The definition of "ccTLD (Country Code Top Level Domain) manager" stated in Article IX, Section 4(1) and the definitions stated in Article IX, Section 4(4) shall apply within this Section 4 of Article XX.)

2. After the adoption of Article IX of these Bylaws, the Nominating Committee shall select the three members of the ccNSO (Country Code Names Supporting Organization) Council described in Article IX, Section 3(1)(b). In selecting three individuals to serve on the ccNSO (Country Code Names Supporting Organization) Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN (Internet Corporation for Assigned Names and

Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the ccNSO (Country Code Names Supporting Organization) Council is constituted. The three members of the ccNSO (Country Code Names Supporting Organization) Council selected by the Nominating Committee shall not take their seats before the ccNSO (Country Code Names Supporting Organization) Council is constituted.

3. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the At-Large Advisory Committee (Advisory Committee) and the Governmental Advisory Committee (Advisory Committee) may designate one liaison each to the ccNSO (Country Code Names Supporting Organization) Council, as provided by Article IX, Section 3(2)(a) and (b).

4. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the Council may designate Regional Organizations as provided in Article IX, Section 5. Upon its designation, a Regional Organization may appoint a liaison to the ccNSO (Country Code Names Supporting Organization) Council.

5. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO (Country Code Names Supporting Organization) Council is constituted, the ccNSO (Country Code Names Supporting Organization) shall, through the ccNSO (Country Code Names Supporting Organization) Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in Article VI, Section 8(1)(d) and (f) of the New Bylaws, and shall give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

6. Until the ccNSO (Country Code Names Supporting Organization) Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO (Country Code Names Supporting Organization) shall be appointed by the Transition Board or New Board, depending on which

is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD (Country Code Top Level Domain) community. Upon the ccNSO (Country Code Names Supporting Organization) Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO (Country Code Names Supporting Organization) Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in Article VII, Section 2(8)(c) shall be made by the ccNSO (Country Code Names Supporting Organization) Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO (Generic Names Supporting Organization), subject to ICANN (Internet Corporation for Assigned Names and Numbers) Board approval of each individual Stakeholder Group Charter:

a. The gTLD (generic Top Level Domain) Registries Constituency shall be assigned to the Registries Stakeholder Group;

b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;

c. The Business Constituency shall be assigned to the Commercial Stakeholder Group;

d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group;

e. The Internet Services Providers Constituency shall be assigned to the Commercial Stakeholder Group; and

f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.

2. Each GNSO (Generic Names Supporting Organization) Constituency described in paragraph 1 of this subsection shall continue operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency, provided that each GNSO (Generic Names Supporting Organization) Constituency described in paragraph 1 (c-f) shall submit to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary a new or revised Charter inclusive of its operating procedures, adopted according to the Constituency's processes and consistent with these Bylaws Amendments, no later than the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date as the Board may designate by resolution.

3. Prior to the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall consist of its current Constituency structure and officers as described in Article X, Section 3(1) of the Bylaws (/en/general/archive-bylaws/bylaws-20mar09.htm#X-3.1) (as amended and restated on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO (Generic Names Supporting Organization) Council shall be as provided in these Bylaws, as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO (Generic Names Supporting Organization) Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same charters, membership, and activities, subject to any change by action of the GNSO (Generic Names Supporting Organization) Council or ICANN (Internet Corporation for Assigned Names and Numbers) Board.

4. Beginning with the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO (Generic Names Supporting Organization) Council seats shall be assigned as follows:

a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group;

b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group;

c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group;

d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group;

e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO (Generic Names Supporting Organization) Council at large.

Representatives on the GNSO (Generic Names Supporting Organization) Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter, approved by the Board, and sufficiently in advance of the October 2009 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO (Generic Names Supporting Organization) Council, as part of its Restructure Implementation Plan, will document: (a) how

vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO (Generic Names Supporting Organization) Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.

6. As soon as practical after the commencement of the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in October 2009, or another date the Board may designate by resolution, the GNSO (Generic Names Supporting Organization) Council shall, in accordance with Article X, Section 3(7) and its GNSO (Generic Names Supporting Organization) Operating Procedures, elect officers and give the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The Protocol (Protocol) Supporting Organization (Supporting Organization) referred to in the Old Bylaws (/en/general/archive-bylaws/bylaws-12feb02.htm#VI-C) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

1. Upon the adoption of the New Bylaws, the Governmental Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental Advisory Committee (Advisory Committee) may designate liaisons to serve with other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as contemplated by the New Bylaws by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Promptly upon the adoption of this Transition Article, the Governmental Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2 of the New Bylaws.

2. The organizations designated as members of the Technical Liaison Group under Article XI-A, Section 2(2) of the New Bylaws shall each designate the two individual technical experts described in Article XI-A, Section 2(6) of the New Bylaws, by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. As soon as feasible, the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to Article XI-A, Section 2(7) of the New Bylaws.

3. Upon the adoption of the New Bylaws, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(4) of the New Bylaws.

4. Upon the adoption of the New Bylaws, the Root Server System Advisory Committee (Advisory Committee) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee (Advisory Committee) shall notify the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of the person selected as its delegate to the Nominating Committee, as set forth in Article VII, Section 2(3) of the New Bylaws.

5. At-Large Advisory Committee (Advisory Committee)

a. There shall exist an Interim At-Large Advisory Committee (Advisory Committee) until such time as ICANN (Internet Corporation for Assigned Names and Numbers) recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in Article XI, Section 2(4) of the New Bylaws. The Interim At-Large Advisory Committee (Advisory Committee) shall be composed of (i) ten

individuals (two from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN (Internet Corporation for Assigned Names and Numbers) region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in Article VII, Section 5 of the New Bylaws. The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2005.

b. Upon the entry of each RALO into such a Memorandum of Understanding, that entity shall be entitled to select two persons who are citizens and residents of that Region to be members of the At-Large Advisory Committee (Advisory Committee) established by Article XI, Section 2(4) of the New Bylaws. Upon the entity's written notification to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary of such selections, those persons shall immediately assume the seats held until that notification by the Interim At-Large Advisory Committee (Advisory Committee) members previously selected by the Board from the RALO's region.

c. Upon the seating of persons selected by all five RALOs, the Interim At-Large Advisory Committee (Advisory Committee) shall become the At-Large Advisory Committee (Advisory Committee), as established by Article XI, Section 2(4) of the New Bylaws. The five individuals selected to the Interim At-Large Advisory Committee (Advisory Committee) by the Nominating Committee shall become members of the At-Large Advisory Committee (Advisory Committee) for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large Advisory Committee (Advisory Committee) shall notify the ICANN (Internet

> Corporation for Assigned Names and Numbers) Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in Article VII, Section 2(6) of the New Bylaws.

Section 8. OFFICERS

ICANN (Internet Corporation for Assigned Names and Numbers) officers (as defined in Article XIII of the New Bylaws) shall be elected by the then-existing Board of ICANN (Internet Corporation for Assigned Names and Numbers) at the annual meeting in 2002 to serve until the annual meeting in 2003.

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) President shall continue unchanged in membership, scope, and operation until changes are made by the President.

Section 10. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("PDP (Policy Development Process)") until such time as modifications are recommended to and approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("Board"). The role of the GNSO (Generic Names Supporting Organization) is outlined in Article X of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are not intended to result in a Consensus (Consensus) Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

> a. Final Issue Report requested by the Board, the GNSO (Generic Names Supporting Organization) Council ("Council") or Advisory Committee (Advisory Committee), which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party Is affected by the issue;
>
> b. Formal initiation of the Policy Development Process by the Council;
>
> c. Formation of a Working Group or other designated work method;
>
> d. Initial Report produced by a Working Group or other designated work method;
>
> e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;
>
> f. Council approval of PDP (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;
>
> g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council]; and
>
> h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual (PDP (Policy Development Process) Manual)

within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Article X, Section 3.6.

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO (Generic Names Supporting Organization) Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee (Advisory Committee) Request. An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (Generic Names Supporting Organization) Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

> a) The proposed issue raised for consideration;
>
> b) The identity of the party submitting the request for the Issue Report;
>
> c) How that party is affected by the issue, if known;
>
> d) Support for the issue to initiate the PDP (Policy Development Process), if known;
>
> e) The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.
>
> f) The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. **Initiation of the PDP (Policy Development Process)**

The Council may initiate the PDP (Policy Development Process) as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Article X, Section 3, paragraph 9(b) and (c) in favor of initiating the PDP (Policy Development Process).

Section 6. **Reports**

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time may be extended in accordance with the PDP (Policy Development Process) Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9(d) through (g), as supplemented by the PDP (Policy Development Process) Manual.

Section 8. **Preparation of the Board Report**

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

> d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. **Additional Definitions**

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO (Generic Names Supporting Organization) Council.

"Staff Manager" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"GNSO (Generic Names Supporting Organization) Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("PDP (Policy Development Process)").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

a. *Council.* The ccNSO (Country Code Names Supporting Organization) Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.

b. *Board.* The ICANN (Internet Corporation for Assigned Names and Numbers) Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee).* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committee (Advisory Committee) may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. *Members of the ccNSO (Country Code Names Supporting Organization).* The members of the ccNSO (Country Code Names Supporting Organization) may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO (Country Code Names Supporting Organization) present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

> a. The proposed issue raised for consideration;
>
> b. The identity of the party submitting the issue;
>
> c. How that party is affected by the issue;
>
> d. Support for the issue to initiate the PDP (Policy Development Process);
>
> e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:
>
> > 1) The issue is within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission statement;
> >
> > 2) Analysis of the relevant factors according to Article IX, Section 6(2) and Annex C affirmatively demonstrates that the issue is

> within the scope of the ccNSO (Country Code Names Supporting Organization);

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

> 3) Implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy;
>
> 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN (Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP (Policy Development Process) including both

the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein (PDP (Policy Development Process) Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN (Internet Corporation for Assigned Names and Numbers) Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty.Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP (Policy Development Process). Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favor of initiating the PDP (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) mission statement and the ccNSO (Country Code Names Supporting Organization) Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP (Policy Development Process) has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

> a. In favor of convening a task force, it shall do so in accordance with Item 7 below.
>
> b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP (Policy Development Process) Time Lineset out in the Issue Report.

5. Composition and Selection of Task Forces

> a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Article IX, Section 6) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (Advisory Committee) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
>
> b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO (Country Code Names Supporting Organization) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP (Policy Development Process) Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP (Policy Development Process);

2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and

3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Article IX, Section 3(14) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP (Policy Development Process) Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and

may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO (Country Code Names Supporting Organization) members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP (Policy Development Process) Time Line. Every Regional Statement shall include at least the following:

(i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO (Country Code Names Supporting Organization) members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from

> outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP (Policy Development Process) Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP (Policy Development Process) Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). Each Task Force Report must include:

> 1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
>
> 2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
>
> 3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
>
> 4. An analysis of the period of time that would likely be necessary to implement the policy; and
>
> 5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the

advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (Policy Development Process) Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) to offer opinion or advice.

d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP (Policy Development Process) Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

a. A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP (Policy Development Process) Time Line.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

> a. A clear statement of the Council's recommendation;
>
> b. The Final Report submitted to the Council; and
>
> c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes within the voting period, the resulting vote will be be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO (Country Code Names Supporting Organization) members, will be employed if at least 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

> a. A clear statement of the ccNSO (Country Code Names Supporting Organization) recommendation;
>
> b. The Final Report submitted to the Council; and
>
> c. the Members' Report.

15. Board Vote

> a. The Board shall meet to discuss the ccNSO (Country Code Names Supporting Organization) Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.

b. The Board shall adopt the ccNSO (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).

1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than

66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").

5. In the event the Board determines not to accept a ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO (Country Code Names Supporting Organization) shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

a. Issue Report;

b. PDP (Policy Development Process) Time Line;

c. Comment Report;

d. Regional Statement(s);

e. Preliminary Task Force Report;

f. Task Force Report;

g. Initial Report;

h. Final Report;

i. Members' Report;

j. Board Report;

k. Board Statement;

l. Supplemental Members' Report; and

m. Supplemental Board Statement.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO (Country Code Names Supporting Organization)

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role. As provided in Article IX, Section 6(2) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting

Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the ICANN (Internet Corporation for Assigned Names and Numbers) Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

> 1. Data is registered/maintained to generate a zone file,
>
> 2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a TLD (Top Level Domain) two functions have to be performed (these are addressed in greater detail below):

> 1. Entering data into a database (Data Entry Function) and
>
> 2. Maintaining and ensuring upkeep of name-servers for the TLD (Top Level Domain) (Name Server Function).

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers) and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

> (a) under which data will be collected and entered into a database or data changed (at the TLD (Top Level Domain) level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.
>
> (b) for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF (National Science Foundation (USA)))

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD (Country Code Top Level Domain) level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of

authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to defined and determined.

The information below offers an aid to:

> 1. delineate and identify specific policy areas;
>
> 2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

> Level 1: Root Name Servers
> Policy role: IETF (Internet Engineering Task Force), RSSAC (Root

Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: Root Server System Operators
Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers)), (US DoC-ICANN (Internet Corporation for Assigned Names and Numbers) MoU (Memorandum of Understanding))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))
Executive role: Registrant (Registrant)
Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority))
Accountability role: ICANN (Internet Corporation for Assigned Names and Numbers) community, ccTLD (Country Code Top Level Domain) Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD (Country Code Top Level Domain) Registry
Policy role: Local Internet Community, including local government, and/or ccTLD (Country Code Top Level Domain) Manager according to

local structure
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels
Policy role: Registrant (Registrant)
Executive role: Registrant (Registrant)
Accountability role: Registrant (Registrant), users of lower-level domain names

Ex. R-2

RESPONDENT'S EXHIBIT

Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy

Approved Board Resolutions | Singapore

This page is available in: English | العربية | Español | Français | Русский | 中文

20 Jun 2011

1. Approval of the New gTLD Program

Whereas, on 28 November 2005, the GNSO Council voted unanimously to initiate a policy development process on the introduction of new gTLDs.

Whereas, the GNSO Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the policy development process.

Whereas, on 6 September 2007, the GNSO Council approved by a supermajority vote a motion supporting the 19 recommendations, as a whole, as set out in the Final Report of the ICANN Generic Names Supporting Organisation on the Introduction of New Generic Top-Level Domains going forward to the ICANN Board <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

Whereas, the Board instructed staff to review the GNSO recommendations and determine whether they were capable of implementation, and staff engaged international technical, operational and legal expertise to support the implementation of the policy recommendations and developed implementation plans for the GNSO's policy recommendations.

Whereas, on 26 June 2008, the Board adopted the GNSO policy recommendations for the introduction of new gTLDs and directed staff to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the launching the new gTLD application process <http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171>.

Whereas, staff has made implementation details publicly available in the form of drafts of the gTLD Applicant Guidebook and supporting materials for public discussion and comment.

Whereas, the first draft of the Applicant Guidebook was published on 23 October 2008 <http://www.icann.org/en/topics/new-gtlds/comments-en.htm>, and the Guidebook has undergone continued substantial revisions based on stakeholder input on multiple drafts.

Operational Design Phase (ODP)

Implementation

Public Comment

Root Zone KSK Rollover

Technical Functions

Contact

Help

Whereas, the Board has conducted intensive consultations with the Governmental Advisory Committee (including in Brussels in February 2011, in San Francisco in March 2011, by telephone in May 2011, and in Singapore on 19 June 2011), resulting in substantial agreement on a wide range of issues noted by the GAC, and the Board has directed revisions to the Applicant Guidebook to reflect such agreement.

Whereas, ICANN received letters from the United States Department of Commerce and the European Commission addressing the issue of registry-registrar cross-ownership, and the Board considered the concerns expressed therein. The Board agrees that the potential abuse of significant market power is a serious concern, and discussions with competition authorities will continue.

Whereas, ICANN has consulted with the GAC to find mutually acceptable solutions on areas where the implementation of policy is not consistent with GAC advice, and where necessary has identified its reasons for not incorporating the advice in particular areas, as required by the Bylaws; see <http://www.icann.ord/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf> [PDF, 103 KB].

Whereas, the ICANN community has dedicated countless hours to the review and consideration of numerous implementation issues, by the submission of public comments, participation in working groups, and other consultations.

Whereas, the Board has listened to the input that has been provided by the community, including the supporting organizations and advisory committees, throughout the implementation process.

Whereas, careful analysis of the obligations under the Affirmation of Commitments and the steps taken throughout the implementation process indicates that ICANN has fulfilled the commitments detailed in the Affirmation <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

Whereas, the Applicant Guidebook posted on 30 May 2011 <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm> includes updates resulting from public comment and from recent GAC advice.

Whereas, the draft New gTLDs Communications Plan <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf> [PDF, 486 KB] forms the basis of the global outreach and education activities that will be conducted leading up to and during the execution of the program in each of the ICANN geographic regions.

Whereas, the Draft FY12 Operating Plan and Budget <http://www.icann.org/en/announcements/announcement-17may11-en.htm> includes a New gTLD Program Launch Scenario, and the Board is prepared to approve the expenditures included in Section 7 of the Draft FY12 Operating Plan and Budget.

Whereas, the Board considers an applicant support program important to ensuring an inclusive and diverse program, and will direct work to implement a model for providing support to potential applicants from developing countries.

Whereas, the Board's Risk Committee has reviewed a comprehensive risk assessment associated with implementing the New gTLD Program, has reviewed the defined strategies for mitigating the identified risks, and will review contingencies as the program moves toward launch.

Whereas, the Board has reviewed the current status and plans for operational readiness and program management within ICANN.

Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD program which includes the following elements:

1. the 30 May 2011 version of the Applicant Guidebook <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>, subject to the revisions agreed to with the GAC on 19 June 2011, including: (a) deletion of text in Module 3 concerning GAC advice to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms; (b) incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest, and (c) modification of the "loser pays" provision in the URS to apply to complaints involving 15 (instead of 26) or more domain names with the same registrant; the Board authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes;

2. the Draft New gTLDs Communications Plan as posted at <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf> [PDF, 486 KB], as may be revised and elaborated as necessary and appropriate;

3. operational readiness activities to enable the opening of the application process;

4. a program to ensure support for applicants from developing countries, with a form, structure and processes to be determined by the Board in consultation with stakeholders including: (a) consideration of the GAC recommendation for a fee waiver corresponding to 76 percent of the $185,000 USD evaluation fee, (b) consideration of recommendations of the ALAC and GNSO as chartering organizations of the Joint Applicant Support (JAS) Working Group, (c) designation of a budget of up to $2 million USD for seed funding, and creating opportunities for other parties to provide matching funds, and (d) the review of additional community feedback, advice from ALAC, and recommendations from the GNSO following their receipt of a Final Report from the JAS Working Group

(requested in time to allow staff to develop an implementation plan for the Board's consideration at its October 2011 meeting in Dakar, Senegal), with the goal of having a sustainable applicant support system in place before the opening of the application window;

5. a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the new gTLD program, based on the "Process for Handling Requests for Removal of Cross-Ownership Restrictions for Existing gTLDs" <http://www.icann.org/en/announcements/announcement-02may11-en.htm>, as modified in response to comments <http://www.icann.org/en/tlds/process-cross-ownership-gtlds-en.htm> (a redline of the Process to the earlier proposal is provided at <http://www.icann.org/en/minutes/process-cross-ownership-restrictions-gtlds-20jun11-en.pdf> [PDF, 97 KB]); consideration of modification of existing agreements to allow cross-ownership with respect to the operation of existing gTLDs is deferred pending further discussions including with competition authorities;

6. the expenditures related to the New gTLD Program as detailed in section 7 of the Draft FY12 Operating Plan and Budget <http://www.icann.org/en/announcements/announcement-17may11-en.htm>; and

7. the timetable as set forth in the attached graphic <http://www.icann.org/en/minutes/timeline-new-gtld-program-20jun11.pdf> [PDF, 167 KB], elements of which include the New gTLD application window opening on 12 January 2012 and closing on 12 April 2012, with the New gTLD Communications Plan beginning immediately.

Resolved (2011.06.20.02), the Board and the GAC have completed good faith consultations in a timely and efficient manner under the ICANN Bylaws, Article XI, Section 2.j. As the Board and the GAC were not able to reach a mutually acceptable solution on a few remaining issues, pursuant to ICANN Bylaws, Article XI, Section 2.k, the Board incorporates and adopts as set forth in the document describing the remaining areas of difference between ICANN's Board and the GAC <http://www.icann.ord/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf> [PDF, 103 KB] the reasons why the GAC advice was not followed. The Board's statement is without prejudice to the rights or obligations of GAC members with regard to public policy issues falling within their responsibilities.

Resolved (2011.06.20.03), the Board wishes to express its deep appreciation to the ICANN community, including the members of the GAC, for the extraordinary work it has invested in crafting the New gTLD Program in furtherance of ICANN's mission and core values, and counts on the community's ongoing support in executing and reviewing the program.

Rationale for Resolutions 2011.06.20.01-2011.06.20.03

* Note: The Rationale is not final until approved with the minutes of the Board meeting.

Rationale for Approval of the Launch of the New gTLD Program [PDF, 624 KB]

Ex. R-3

RESPONDENT'S EXHIBIT

Final Report - Introduction of New Generic Top-Level Domains

Last Updated: 01 May 2018

Date
08 August 2007

ICANN Generic Names Supporting Organisation

Final Report

Introduction of New Generic Top-Level Domains

8 August 2007

Part A: Final Report

Introduction of New Generic Top-Level Domains

ABSTRACT

BACKGROUND

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS

TERM OF REFERENCE -- SELECTION CRITERIA

TERM OF REFERENCE THREE -- ALLOCATION METHODS

TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS

NEXT STEPS

Annex A – NCUC Minority Statement: Recommendation 6

Annex B – Nominating Committee Appointee Avri Doria: Individual Comments

Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P

REFERENCE MATERIAL -- GLOSSARY

FINAL REPORT: PART B

ABSTRACT

This is the Generic Names Supporting Organization's Final Report on the Introduction of New Top-Level Domains. The Report is in two parts. Part A contains the substantive discussion of the Principles, Policy Recommendations and Implementation Guidelines and Part B contains a range of supplementary materials that have been used by the Committee during the course of the Policy Development Process.

The GNSO Committee on New Top-Level Domains consisted of all GNSO Council members. All meetings were open to a wide range of interested stakeholders and observers. A set of participation data is found in Part B.

Many of the terms found here have specific meaning within the context of ICANN and new top-level domains discussion. A full glossary of terms is available in the Reference Material section at the end of Part A.

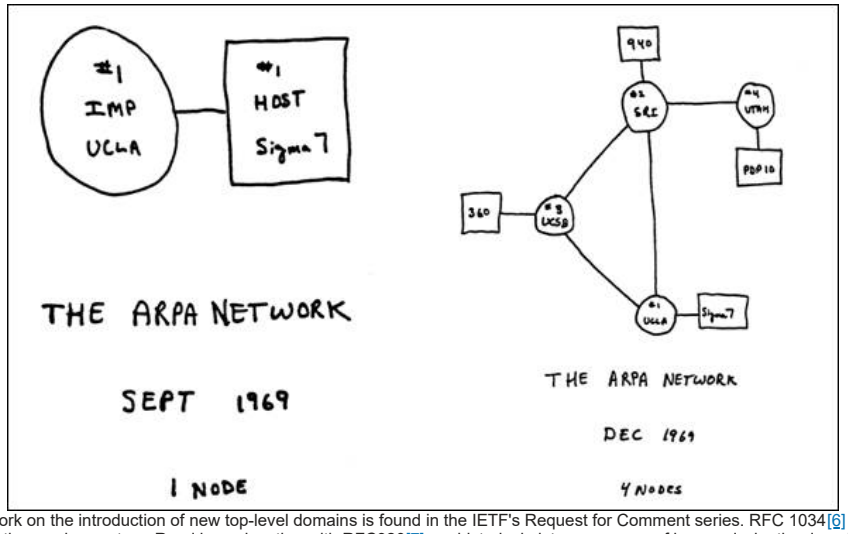
BACKGROUND

1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of "the global Internet's system of unique identifiers" and ensuring the "stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the "allocation and assignment of the three sets of unique identifiers for the Internet". These are "domain names"(forming a system called the DNS); Internet protocol (IP) addresses and autonomous system (AS) numbers and Protocol port and parameter numbers". ICANN is also responsible for the "operation and evolution of the DNS root name server system and policy development reasonably and appropriately related to these technical functions". These elements are all contained in ICANN's Mission and Core Values[1] in addition to provisions which enable policy development work that, once approved by the ICANN Board, become binding on the organization. The results of the policy development process found here relate to the introduction of new generic top-level domains.

2. This document is the *Final Report* of the Generic Names Supporting Organisation's (GNSO) Policy Development Process (PDP) that has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examination of four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains. The policy development process (PDP) is part of the Generic Names Supporting Organisation's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisations and Advisory Committees has been an integral part of the process. The consultations and negotiations have also included a wide range of interested stakeholders from within and outside the ICANN community[2].

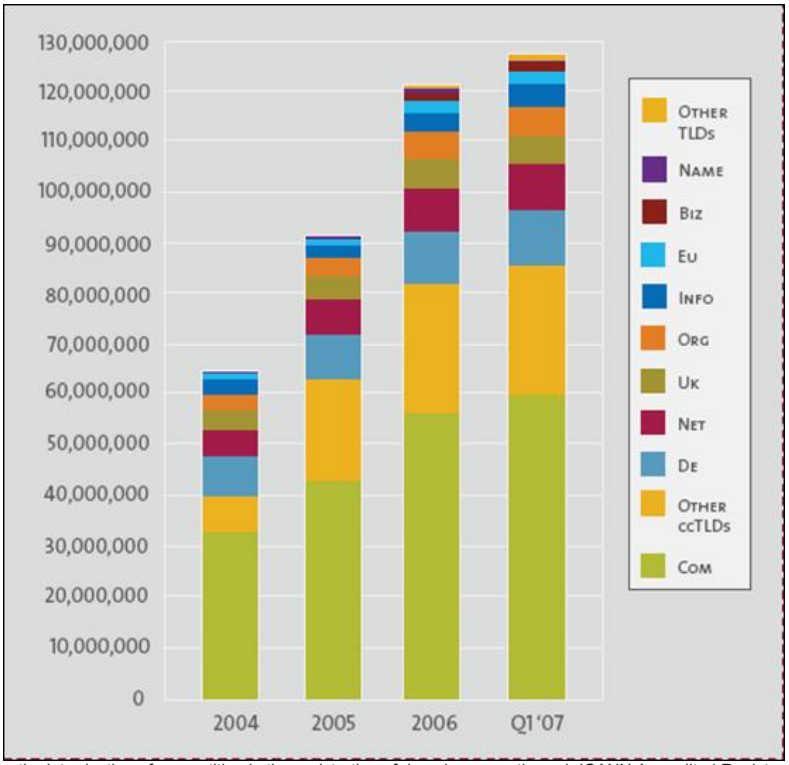
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005[3]. Part B of the *Report* contains a wide range of supplementary materials which have been used in the policy development process including Constituency Impact Statements (CIS), a series of Working Group Reports on important sub-elements of the Committee's deliberations, a collection of external reference materials, and the procedural documentation of the policy development process[4].

4. The finalisation of the policy for the introduction of new top-level domains is part of a long series of events that have dramatically changed the nature of the Internet. The 1969 ARPANET diagram shows the initial design of a network that is now global in its reach and an integral part of many lives and businesses. The policy recommendations found here illustrate the complexity of the Internet of 2007 and, as a package, propose a system to add new top-level domains in an orderly and transparent way. The ICANN Staff Implementation Team, consisting of policy, operational and legal staff members, has worked closely with the Committee on all aspects of the policy development process[5]. The ICANN Board has received regular information and updates about the process and the substantive results of the Committee's work.



5. The majority of the early work on the introduction of new top-level domains is found in the IETF's Request for Comment series. RFC 1034[6] is a fundamental resource that explains key concepts of the naming system. Read in conjunction with RFC920[7], an historical picture emerges of how and why the domain name system hierarchy has been organised. Postel & Reynolds set out in their RFC920 introduction about the "General Purpose Domains" that ..."While the initial domain name "ARPA" arises from the history of the development of this system and environment, in the future most of the top level names will be very general categories like "government", "education", or "commercial". The motivation is to provide an organization name that is free of undesirable semantics."

6. In 2007, the Internet is multi-dimensional and its development is driven by widespread access to inexpensive communications technologies in many parts of the world. In addition, global travel is now relatively inexpensive, efficient and readily available to a diverse range of travellers. As a consequence, citizens no longer automatically associate themselves with countries but with international communities of linguistic, cultural or professional interests independent of physical location. Many people now exercise multiple citizenship rights, speak many different languages and quite often live far from where they were born or educated. The 2007 OECD *Factbook*[8] provides comprehensive statistics about the impact of migration on OECD member countries. In essence, many populations are fluid and changing due in part to easing labour movement restrictions but also because technology enables workers to live in one place and work in another relatively easily. As a result, companies and organizations are now global and operate across many geographic borders and jurisdictions. The following illustration[9] shows how rapidly the number of domain names under registration has increased and one could expect that trend to continue with the introduction of new top-level domains.



7. A key driver of change has been the introduction of competition in the registration of domain names through ICANN Accredited Registrars[10]. In June 2007, there were more than 800 accredited registrars who register names for end users with ongoing downward pressure on the prices end-users pay for domain name registration.

8. ICANN's work on the introduction of new top-level domains has been underway since 1999. By mid-1999, Working Group C[11] had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

9. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel[12].

10. The July 2007 zone file survey statistics from www.registrarstats.com[13] shows that there are slightly more than 96,000,000 top level domains registered across a selection of seven top-level domains including .com, .net and .info. Evidence from potential new applicants provides more impetus to implement a system that enables the ongoing introduction of new top level domains[14]. In addition, interest from Internet users who could use Internationalised Domain Names (IDNs) in a wide variety of scripts beyond ASCII is growing rapidly.

11. To arrive at the full set of policy recommendations which are found here, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[15], and which was augmented by a full set of GNSO Constituency Statements[16]. These are all found in Part B of the *Final Report* and should be read in conjunction with this document. In addition, the Committee received detailed responses from the Implementation Team about proposed policy recommendations and the implementation of the recommendations package as an on-line application process that could be used by a wide array of potential applicants.

12. The Committee reviewed and analysed a wide variety of materials including Working Group C's findings, the evaluation reports from the 2003 & 2004 round of sponsored top-level domains and a full range of other historic materials[17].

13. In the past, a number of different approaches to new top level domains have been considered including the formulation of a structured taxonomy[18] of names, for example, .auto, .books, .travel and .music. The Committee has opted to enable potential applicants to self-select strings that are either the most appropriate for their customers or potentially the most marketable. It is expected that applicants will apply for targeted community strings such as .travel for the travel industry and .cat for the Catalan community as well as some generic strings. The Committee identified five key drivers for the introduction of new top-level domains.

(i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated

(ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds

(iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.

(iv) There is demand for additional top-level domains as a business opportunity. The GNSO Committee expects that this business opportunity will stimulate competition at the registry service level which is consistent with ICANN's Core Value 6.

(v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

14. The remainder of this Report is structured around the four *Terms of Reference*. This includes an explanation of the Principles that have guided the work taking into account the Governmental Advisory Committee's March 2007 *Public Policy Principles for New gTLDs*[19]; a comprehensive set of Recommendations which has majority Committee support and a set of Implementation Guidelines which has been discussed in great detail with the ICANN Staff Implementation Team. The Implementation Team has released two *ICANN Staff Discussion Points* documents (in November 2006 and June 2007). Version 2 provides detailed analysis of the proposed recommendations from an implementation standpoint and provides suggestions about the way in which the implementation plan may come together. The ICANN Board will make the final decision about the actual structure of the application and evaluation process.

15. In each of the sections below the Committee's recommendations are discussed in more detail with an explanation of the rationale for the decisions. The recommendationshave been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work[20]. In particular, detailed work has been conducted through the Internationalised Domain Names Working Group (IDN-WG)[21], the Reserved Names Working Group (RN-WG) [22] and the Protecting the Rights of Others Working Group (PRO-WG) [23]. The Working Group Reports are found in full in Part B of the *Final Report* along with the March 2007 GAC Public Policy Principles for New Top-Level Domains, Constituency Impact Statements. A minority statement from the NCUC about Recommendations 6 & 20 are found Annexes for this document along with individual comments from Nominating Committee appointee Ms Avri Doria.

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[24].

2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.[25]

3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.

4. The Principles have support from all GNSO Constituencies.

	PRINCIPLES	**MISSION & CORE VALUES**
A	**New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.**	**M1 & CV1 & 2, 4-10**
B	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
C	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
D	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
E	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
F	**A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.**	**M1-3 & CV 1**
G	**The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.**	

	RECOMMENDATIONS[26]	MISSION & CORE VALUES
1	**ICANN must implement a process that allows the introduction of new top-level domains.** **The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.** **All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.**	**M1-3 & CV1-11**
2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word[27].	M1-3 & CV 1 & 3
6*	**Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.** **Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).**	**M3 & CV 4**
7	**Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.**	**M1-3 & CV1**
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	**There must be a clear and pre-published application process using objective and measurable criteria.**	**M3 & CV6-9**
10	**There must be a base contract provided to applicants at the beginning of the application process.**	**CV7-9**
11	**[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]**	
12	**Dispute resolution and challenge processes must be established prior to the start of the process.**	**CV7-9**
13	Applications must initially be assessed in rounds until the scale of demand is clear.	**CV7-9**
14	The initial registry agreement term must be of a commercially reasonable length**.**	**CV5-9**
15	**There must be renewal expectancy.**	**CV5-9**
16	**Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.**	**CV5-9**
17	**A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.**	**M1 & CV1**
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9

IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants.	CV 5, 6, 8 & 9
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	**If there is contention for strings, applicants may[29]:** **i) resolve contention between them within a pre-established timeframe** **ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;** **iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.**	CV 7-10
IG H*	Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and (ii) a formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim. Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.	CV 7 - 10
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English[30].	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10

IG P*	The following process, definitions and guidelines refer to Recommendation 20. **Process** Opposition must be objection based. Determination will be made by a dispute resolution panel constituted for the purpose. The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection). **Guidelines** The task of the panel is the determination of substantial opposition. a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting. c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted. d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application. e) **implicitly targeting** – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use. f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO. g) **formal existence** – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar. **h) detriment** – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.	
IG Q	ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.	
IG R	Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.	

* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*[31] documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board

2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner[32]. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.

3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.

4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.

TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS

1. **Recommendation 1 Discussion – All GNSO Constituencies supported the introduction of new top-level domains.**

2. The GNSO Committee was asked to address the question of whether to introduce new top-level domains. The Committee recommends that ICANN should implement a process that allows the introduction of new top level domains and that work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations found in the latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Conditions (Term of Reference 4).

3. ICANN's work on the introduction of new top-level domains has been ongoing since 1999. The early work included the 2000 Working Group C Report[33] that also asked the question of "whether there should be new TLDs". By mid-1999, the Working Group had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

4. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel.

5. In addressing Term of Reference One, the Committee arrived at its recommendation by reviewing and analysing a wide variety of materials including Working Group C's findings; the evaluation reports from the 2003-2004 round of sponsored top-level domains and full range of other historic materials which are posted athttp://gnso.icann.org/issues/new-gtlds//

6. In addition, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[34]. These papers augmented a full set of GNSO Constituency Statements[35] and a set of Constituency Impact Statements[36] that addressed specific elements of the Principles, Recommendations and Implementation Guidelines.

7. The Committee was asked, at its February 2007 Los Angeles meeting, to confirm its rationale for recommending that ICANN introduce new top-level domains. In summary, there are five threads which have emerged:

(i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated

(ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds

(iii) It is hoped that expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.

(iv) In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, and to add to consumer choice, market differentiation and geographic and service-provider diversity which is consistent with ICANN's Core Value 6.

(v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

8. Article X, Part 7, Section E of the GNSO's Policy Development Process requires the submission of "constituency impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Constituencies had submitted Constituency Impact Statements (CIS) to the gtld-council mailing list[37]. Each of those statements is referred to throughout the next sections[38] and are found in full in Part B of the *Report*. The NCUC submitted Minority Statements on Recommendations 6 & 20 and on Implementation Guidelines F, H & P. These statements are found in full here in Annex A & C, respectively, as they relate specifically to the finalised text of those two recommendations. GNSO Committee Chair and Nominating Committee appointee Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.

9. All Constituencies support the introduction of new TLDs particularly if the application process is transparent and objective. For example, the ISPCP said that, "...the ISPCP is highly supportive of the principles defined in this section, especially with regards to the statement in [principle A] (A): New generic top-level domains must be introduced in an orderly, timely and predictable way. Network operators and ISPs must ensure their customers do not encounter problems in addressing their emails, and in their web searching and access activities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to the gTLD namespace. The various criteria as defined in D, E and F, are also of great importance in contributing to minimise the risk of moving forward with any new gTLDs, and our constituency urges ICANN to ensure they are scrupulously observed during the applications evaluation process". The Business Constituency's (BC) CIS said that "...If the outcome is the best possible there will be a beneficial impact on business users from: a reduction in the competitive concentration in the Registry sector; increased choice of domain names; lower fees for registration and ownership; increased opportunities for innovative on-line business models." The Registrar Constituency (RC) agreed with this view stating that "...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs if implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model."

10. The Registry Constituency (RyC) said that "...Regarding increased competition, the RyC has consistently supported the introduction of new gTLDs because we believe that: there is a clear demand for new TLDs; competition creates more choices for potential registrants; introducing new TLDs with different purposes increases the public benefit; new gTLDS will result in creativity and differentiation in the domain name industry; the total market for all TLDs, new and old, will be expanded." In summary, the Committee recommended, "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process". Given that this recommendation has support from all Constituencies, the following sections set out the other Terms of Reference recommendations.

TERM OF REFERENCE -- SELECTION CRITERIA

1. **Recommendation 2 Discussion -- Strings must not be confusingly similar to an existing top-level domain.**

i) This recommendation has support from all the GNSO Constituencies. Ms Doria accepted the recommendation with the concern expressed below[39].

ii) The list of existing top-level domains is maintained by IANA and is listed in full on ICANN's website[40]. Naturally, as the application process enables the operation of new top-level domains this list will get much longer and the test more complex. The RyC, in its Impact Statement, said that "...This recommendation is especially important to the RyC. ... It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future. There is a strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user confusion in both email and web applications, but dispute resolution processes could be greatly complicated." The ISPCP also stated that this recommendation was "especially important in the avoidance of any negative impact on network activities." The RC stated that "...Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer demand and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers".

iii) There are two other key concepts within this recommendation. The first is the issue of "confusingly similar" [41] and the second "likelihood of confusion". There is extensive experience within the Committee with respect to trademark law and the issues found below have been discussed at length, both within the Committee and amongst the Implementation Team.

iv) The Committee used a wide variety of existing law[42], international treaty agreements and covenants to arrive at a common understanding that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademarks[43]. For example, the Committee considered the World Trade Organisation's TRIPS agreement, in particular Article 16 which discusses the rights which are conferred to a trademark owner.[44] In particular, the Committee agreed upon an expectation that strings must avoid increasing opportunities for entities or individuals, who operate in bad faith and who wish to defraud consumers. The Committee also considered the Universal Declaration of Human Rights[45] and the International Covenant on Civil and Political Rights which address the "freedom of expression" element of the Committee's deliberations.

v) The Committee also benefited from the work of the Protecting the Rights of Others Working Group (PRO-WG). The PRO-WG presented its *Final Report*[46] to the Committee at the June 2007 San Juan meeting. The Committee agreed that the Working Group could develop some reference implementation guidelines on rights protection mechanisms that may inform potential new TLD applicants during the application process. A small ad-hoc group of interested volunteers are preparing those materials for consideration by the Council by mid-October 2007.

vi) The Committee had access to a wide range of differing approaches to rights holder protection mechanisms including the United Kingdom, the USA, Jordan, Egypt and Australia[47].

vii) In addition, the Committee referred to the 1883 *Paris Convention on the Protection of Industrial Property*[48]. It describes the notion of confusion and describes creating confusion as "to create confusion by any means whatever" {Article 10bis (3) (1} and, further, being "liable to mislead the public" {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law (currently covering twenty-seven countries) and is structured as follows. "...because of its identity with or similarity to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..." {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.

viii)In the United States, existing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at http://www.bitlaw.com/source/15usc/1051.html.)[49]

ix) In Australia, the Australian Trade Marks Act 1995 Section 10 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at http://www.ipaustralia.gov.au/resources/legislation_index.shtml)

x) A number of different trademark offices provide guidance on how to interpret confusion. For example, the European Union Trade Mark Office provides guidance on how to interpret confusion. *"...confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables."* (found at http://oami.europa.eu/en/mark/marque/direc.htm).

xi) An extract from the United Kingdom's Trade Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. *"For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion...".* (found athttp://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm)

xii) The Committee also looked in detail at the existing provisions of ICANN's Registrar Accreditation Agreement, particularly Section 3.7.7.9[50] which says that "...The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party."

xiii)The implications of the introduction of Internationalised Domain Names (IDNs) are, in the main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*[51] that the Working Group presented to the GNSO Committee. The Working Group's exploration of IDN-specific issues confirmed that the new TLD recommendations are valid for IDN TLDs. The full IDN WG Report is found in Part B of the *Report.*

xiv) The technical testing for IDNs at the top-level is not yet completed although strong progress is being made. Given this and the other work that is taking place around the introduction of IDNs at the top-level, there are some critical factors that may impede the immediate acceptance of new IDN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASCII TLDs.

xv) Detailed work continues on the preparation of an Implementation Plan that reflects both the Principles and the Recommendations. The proposed Implementation Plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users[52].

xvi) The draft Implementation Plan (included in the *Discussion Points* document), illustrates the flow of the application and evaluation process and includes a detailed dispute resolution and extended evaluation tracks designed to resolve objections to applicants or applications.

xvii) There is tension between those on the Committee who are concerned about the protection of existing TLD strings and those concerned with the protection of trademark and other rights as compared to those who wish, as far as possible, to preserve freedom of expression and creativity. The *Implementation Plan* sets out a series of tests to apply the recommendation during the application evaluation process.

2. **Recommendation 3 Discussion -- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).**

i. This recommendation has support from all GNSO Constituencies. Ms Doria supported the recommendation with concern expressed below[53].

ii. This recommendation was discussed in detail in the lead up to the Committee's 7 June 2007 conference call and it was agreed that further work would be beneficial. That work was conducted through a series of teleconferences and email exchanges. The Committee decided to leave the recommendation text as it had been drafted and insert a new Principle G that reads "...The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."

iii. Prior to this, the Committee engaged in comprehensive discussion about this recommendation and took advice from a number of experts within the group[54]. The original text of the recommendation has been modified to recognise that an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them. In addition, the original formulation that included "freedom of speech" was modified to read the more generally applicable "freedom of expression".

iv. Before reaching agreement on the final text, the IPC and the NCUC, in their respective Constituency Impact Statements (CIS), had differing views. The NCUC argued that "...there is no recognition that trade marks (and other legal rights have legal limits and *defenses*." The IPC says "agreed [to the recommendation], and, as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others."

3. **Recommendation 4 Discussion -- Strings must not cause any technical instability.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet.

iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any negative impact on network activities...The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The IPC also agreed that "technical and operational stability are imperative to any new gTLD introduction." The RC said "...This is important to Registrars in that unstable registry and/or zone operations would have a serious and costly impact on its operations and customer service and support."

iv. The Security and Stability Advisory Committee (SSAC) has been involved in general discussions about new top level domains and will be consulted formally to confirm that the implementation of the recommendations will not cause any technical instability.

v. A reserved word list, which includes strings which are reserved for technical reasons, has been recommended by the RN-WG. This table is found in the section below.

4. **Recommendation 5 Discussion -- Strings must not be a Reserved Word.**[55]

i. This recommendation is supported by all GNSO Constituencies. Ms Doria supported the recommendation but expressed some concerns outlined in the footnote below. [56]

ii. The RN WG developed a definition of "reserved word" in the context of new TLDs which said "...depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:

1. At the top level regarding gTLD string restrictions
2. At the second-level as contractual conditions
3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.

iii. The notion of "reserved words" has a specific meaning within the ICANN context. Each of the existing ICANN registry contracts has provisions within it that govern the use of reserved words. Some of these recommendations will become part of the contractual conditions for new registry operators.

iv. The Reserved Names Working Group (RN-WG) developed a series of recommendations across a broad spectrum of reserved words. The Working Group's *Final Report*[57]was reviewed and the recommendations updated by the Committee at ICANN's Puerto Rico meeting and, with respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in the following table.

	Reserved Name Category	**Domain Name Level(s)**	**Recommendation**
1	ICANN & IANA	All ASCII	The names listed as ICANN and IANA names will be reserved at all levels.
2	ICANN & IANA	Top level, IDN	Any names that appear in the IDN evaluation facility[58] which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
3	ICANN & IANA	2nd & 3rd levels, IDN	Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
4	Symbols	All	We recommend that the current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use, with further allowance for any equivalent marks that may explicitly be made available in future revisions of the IDNA protocol.
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.
7	Single Letters and Digits	2nd Level	In future gTLDS we recommend that single letters and single digits be available at the second (and third level if applicable).

	Reserved Name Category	Domain Name Level(s)	Recommendation
8	Single and Two Digits	Top Level	A top-level label must not be a plausible component of an IPv4 or IPv6 address. (e.g., .3, .99, .123, .1035, .0xAF, .1578234)
9	Single Letter, Single Digit Combinations	Top Level	Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process. Examples include .3F, .A1, .u7.
10	Two Letters	Top Level	We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time.[59] Examples include .AU, .DE, .UK.
11	Any combination of Two Letters, Digits	2nd Level	Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.[60] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.
12	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level.[61]
13	N/A	Top Level IDN	For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label")[62] For example: • If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京). • If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) and the U-label (東京).
14	Tagged Names	2nd Level ASCII	The current reservation requirement be reworded to say, "*In the absence of standardization activity and appropriate IANA registration,* all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2nd) level. [63] – added words in *italics.* (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
15	Tagged Names	3rd Level ASCII	All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3rd level) for gTLD registries that register names at the third level."[64] – added words in *italics.* (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
16	NIC, WHOIS, WWW	Top ASCII	The following names must be reserved: nic, whois, www.
17	NIC, WHOIS, WWW	Top IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.
18	NIC, WHOIS, WWW	Second and Third* ASCII	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level.)
19	NIC, WHOIS, WWW	Second and Third* IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level.)

	Reserved Name Category	Domain Name Level(s)	Recommendation
20	Geographic and geopolitical	Top Level ASCII and IDN	There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated. However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws. *Note New gTLD Recommendation 20*
21	Geographic and geopolitical	All Levels ASCII and IDN	The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations. *Note New gTLD Recommendation 20*
22	Geographic and geopolitical	Second Level & Third Level if applicable, ASCII & IDN	The consensus view of the working group is given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws. For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State. *Note New gTLD Recommendation 20*
23	gTLD Reserved Names	Second & Third Level ASCII and IDN (when applicable)	Absent justification for user confusion[65], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level.Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.
24	Controversial Names	All Levels, ASCII & IDN	There should not be a new reserved names category for Controversial Names.
25	Controversial Names	Top Level, ASCII & IDN	There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process. *Note New gTLD Recommendation 6*

	Reserved Name Category	Domain Name Level(s)	Recommendation
26	Controversial Names	Top Level, ASCII & IDN	In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names.[66] *Note New gTLD Recommendation 6*
27	Controversial Names	Top Level, ASCII & IDN	The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area. *Note New gTLD Recommendation 6*
28	Controversial Names	Top Level, ASCII & IDN	Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g, ALAC or GAC) or supporting organizations (e.g, GNSO or ccNSO). As these organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined: o The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation. o Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency. *Note New gTLD Recommendation 6*
29	Controversial Names	Top Level, ASCII & IDN	Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to: ▪·✑❒□♦ℳ℔♦ ↗❒ℳℳ♳□❍ □↗ ℳ☒◘❒ℳ⬧⬧✲□■ ▪·✌↗↗✲❒❍ ♦≋ℳ ↗◆■♳♋❍ℳ■♦♋● ≋◆❍♋■ ❒✲ℽ℠≋♦⬧🖃 ✲■ ♦≋ℳ ♳✲ℽ℠■✲♦🖂 ♋■♳ ⬧□❒♦≋ □↗ ♦≋ℳ ≋◆❍♋■ ◘ℳ❒⬧□■ ♋■♳ ♦≋ℳ ℳ❑◆♋● ❒✲ℽ℠≋♦⬧ □↗ ❍ℳ■ ♋■♳ ⬧□❍ℳ■ ▪·❄♋&;ℳ ✲■♦□ ♋℔℔□◆■♦ ⬧ℳ■⬧✲♦✲❖✲♦✲ℳ⬧ ❒ℳℽ℠♋❒♳✲■ℽ℠ ♦ℳ❒❍⬧ ⬧✲♦≋ ℔◆●♦◆❒♋● ♋■♳ ❒ℳ●✲ℽ℠✲□◆⬧ ⬧✲ℽ℠■✲↗✲℔♋■℔ℳ🖝
30	Controversial Names	Top Level, ASCII & IDN	In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered. *Note New gTLD Recommendation 6*

v. With respect to geographic terms, the NCUC's CIS stated that "...We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive. We are concerned that geographic names should not be fenced off from the commons of language and rather should be free for the use of all...Moreover, the proposed recommendation does not make allowance for the duplication of geographic names outside the ccTLDs – where the real issues arise and the means of resolving competing use and fair and nominative use."

vi. The GAC's Public Policy Principle 2.2 states that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities."

vii. The Implementation Team has developed some suggestions about how this recommendation may be implemented. Those suggestions and the process flow were incorporated into the Version 2 of the ICANN Staff *Discussion Points* document for consideration by the Committee.

5. **Recommendation 6 Discussion -- Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.**
Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil

and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

i. This Recommendation is supported by all GNSO Constituencies except the NCUC. The NCUC has submitted a Minority Statement which is found in full in Annex A. The NCUC's earlier Constituency Impact Statement is found, along with all the GNSO Constituency Impact Statements, in Part B of this report. Ms Doria has submitted individual comments[67]. The Committee has discussed this recommendation in great detail and has attempted to address the experiences of the 2003-2004 sTLD round and the complex issues surrounding the .xxx application. The Committee has also recognised the GAC's Public Policy Principles, most notably Principle 2.1 a) and b) which refer to both freedom of expression and terms with significance in a variety of contexts. In addition, the Committee recognises the tension respecting freedom of expression and being sensitive to the legitimate concerns others have about offensive terms. The NCUC's earlier CIS says "...we oppose any string criteria based on morality and public order".

ii. Other Constituencies did not address this recommendation in their CISs. The Implementation Team has tried to balance these views by establishing an Implementation Plan that recognises the practical effect of opening a new top-level domain application system that will attract applications that some members of the community do not agree with. Whilst ICANN does have a technical co-ordination remit, it must also put in place a system of handling objections to strings or to applicants, using pre-published criteria, that is fair and predictable for applicants. It is also necessary to develop guidance for independent evaluators tasked with making decisions about objections.

iii. In its consideration of public policy aspects of new top-level domains the Committee examined the approach taken in a wide variety of jurisdictions to issues of morality and public order. This was done not to make decisions about acceptable strings but to provide a series of potential tests for independent evaluators to use should an objection be raised to an application. The use of the phrase "morality and public order" within the recommendation was done to set some guidelines for potential applicants about areas that may raise objections. The phrasing was also intended to set parameters for potential objectors so that any objection to an application could be analysed within the framework of broadly accepted legal norms that independent evaluators could use across a broad spectrum of possible objections. The Committee also sought to ensure that the objections process would have parameters set for who could object. Those suggested parameters are found within the Implementation Guidelines.

iv. In reaching its decision about the recommendation, the Committee sought to be consistent with, for example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing "contrary to morality or public order and in particular of such a nature as to deceive the public" comes from Article 6quinques (B)(3) of the 1883 *Paris Convention*. The reference to the *Paris Convention* remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.

v. The concept of "morality" is captured in Article 19 United Nations Convention on Human Rights (http://www.unhchr.ch/udhr/lang/eng.htm) says "...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 29 continues by saying that "...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

vi. The EU Trade Mark Office's Examiner's guidelines provides assistance on how to interpret morality and deceit. "...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision." The further element is deception of the public which is treated in the following way. "...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue." For more information, see Sections 8.7 and 8.8 at http://oami.europa.eu/en/mark/marque/direc.htm

vii. The UK Trade Mark office provides similar guidance in its Examiner's Guidance Manual. "Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage." For more information, seehttp://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm)

viii. This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about both the text of the recommendation and the examples included as guidance about generally accepted legal norms. The work has been informed by detailed discussion within the GAC and through interactions between the GNSO Committee and the GAC.

6. **Recommendation 7 Discussion -- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more detailed discussion about technical requirements has been moved to the contractual conditions section.

iii. Reference was made to numerous Requests for Comment (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 .net agreement[68] provides a comprehensive listing of technical requirements in addition to other technical specifications in other parts of the agreement. These requirements are consistent with that which is expected of all current registry operators. These standards would form the basis of any new top-level domain operator requirements.

iv. This recommendation is referred to in two CISs. "The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organisational and operational capabilities of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The NCUC submitted "...we record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination."

v. The GAC supported this direction in its Public Policy Principles 2.6, 2.10 and 2.11.

7. **Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.**

i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria[69].

ii. The Committee discussed this requirement in detail and determined that it was reasonable to request this information from potential applicants. It was also consistent with past practices including the prior new TLD rounds in 2000 and 2003-2004; the .net and .org rebids and the conditions associated with ICANN registrar accreditation.

iii. This is also consistent with best practice procurement guidelines recommended by the World Bank (www.worldbank.org), the OECD (www.oecd.org) and the Asian Development Bank (www.adb.org) as well as a range of federal procurement agencies such as the UK telecommunications regulator, Ofcom; the US Federal Communications Commission and major public companies.

iv. The challenging aspect of this recommendation is to develop robust and objective criteria against which applicants can be measured, recognising a vast array of business conditions and models. This will be an important element of the ongoing development of the Implementation Plan.

v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommendation 7 above.

vi. The NCUC's CIS addressed this recommendation by saying "...we support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operationally capability...All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination."

vii. The GAC echoed these views in its Public Policy Principle 2.5 that said "...the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

8. **Recommendation 9 Discussion -- There must be a clear and pre-published process using objective and measurable criteria.**

i. This recommendation is supported by all GNSO Constituencies and by Ms Doria. It is consistent with ICANN's previous TLD rounds in 2000 and 2003-2004 and with its re-bid of both the .net and .org registry contracts.

ii. It is also consistent with ICANN's Mission and Core Values especially 7, 8 and 9 which address openness in decision-making processes and the timeliness of those processes.

iii. The Committee decided that the "process" criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top-level domains.

iv. The RyC reiterated its support for this recommendation in its CIS. It said that "...this Recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We all stress the need that all evaluation criteria be objective and measurable."

9. **Recommendation 10 Discussion -- There must be a base contract provided to applicants at the beginning of the process.**

i. This recommendation is supported by all GNSO Constituencies and by Ms Doria.

ii. The General Counsel's office has been involved in discussions about the provision of a base contract which would assist applicants both during the application process and in any subsequent contract negotiations.

iii. A framework for the base contract was developed for discussion at the June 2007 ICANN meeting in Puerto Rico. The base contract will not be completed until the policy recommendations are in place. Completion of the policy recommendations will enable the completion of a draft base contract that would be available to applicants prior to the start of the new gTLD process, that is, prior to the beginning of the four-month window preceding the application submittal period.

iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan."

10. **Recommendation 11 Discussion** -- (This recommendation has been removed and is left intentionally blank. Note Recommendation 20 and its Implementation Guidelines).

11. **Recommendation 12 Discussion -- Dispute resolution and challenge processes must be established prior to the start of the process.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. The Committee has provided clear direction on its expectations that all the dispute resolution and challenge processes would be established prior to the opening of the application round. The full system will be published prior to an application round starting. However, the finalisation of this process is contingent upon a completed set of recommendations being agreed; a public comment period and the final agreement of the ICANN Board.

iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the ICANN Staff proposes that disputes between applicants and challenge processes may be handled. Expert legal and other professional advice from, for example, auctions experts is being sought to augment the Implementation Plan.

TERM OF REFERENCE THREE -- ALLOCATION METHODS

12. **Recommendation 13 Discussion -- Applications must initially be assessed in rounds until the scale of demand is clear.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. This recommendation sets out the principal allocation methods for TLD applications. The narrative here should be read in conjunction with the draft flowcharts and the draft Request for Proposals.

iii. An application round would be opened on Day 1 and closed on an agreed date in the future with an unspecified number of applications to be processed within that round.

iv. This recommendation may be amended, after an evaluation period and report that may suggest modifications to this system. The development of objective "success metrics" is a necessary part of the evaluation process that could take place within the new TLDs Project Office.

v. The ISPCP expressed its support for this recommendation. Its CIS said that "...this is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs."

13. **Recommendation 20 Discussion -- An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.**

i. This recommendation is supported by the majority of GNSO Constituencies. Ms Doria supports the recommendation but has concerns about its implementation[70]. The NCUC has submitted a Minority Statement which is found in full in Annex C about the recommendation and its associated Implementation Guidelines F, H and P.

ii. This recommendation was developed during the preparations for the Committee's 7 June 2007 conference call and during subsequent Committee deliberations. The intention was to factor into the process the very likely possibility of objections to applications from a wide variety of stakeholders.

iii. The language used here is relatively broad and the implementation impact of the proposed recommendation is discussed in detail in the Implementation Team's *Discussion Points* document.

iv. The NCUC's response to this recommendation in its earlier CIS says, in part, "...recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties." This view has, in part, been addressed in the Implementation Team's proposed plan but this requires further discussion and agreement by the Committee.

TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS

14. **Recommendation 14 Discussion -- The initial registry agreement term must be of a commercially reasonable length.**

i. The remainder of the recommendations address Term of Reference Four on policies for contractual conditions and should be read in conjunction with Recommendation 10 on the provision of a base contract prior to the opening of an application round. The recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements.

iii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iv. The RyC commented on this recommendation in its CIS saying that "...the members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registration systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations [14 & 15] will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs. These two recommendations will have a very positive impact on new gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community."

15. **Recommendation 15 -- There must be renewal expectancy.**

i. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements and is supported by all Constituencies. Ms Doria supported the recommendation and provided the comments found in the footnote below.[71]

ii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iii. See the CIS comments from the RyC in the previous section.

16. **Recommendation 16 -- Registries must apply existing Consensus Policies**[72] **and adopt new Consensus Policies as they are approved.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. The full set of existing ICANN registry contracts can be found here http://www.icann.org/registries/agreements.htm and ICANN's seven current Consensus Policies are found at http://www.icann.org/general/consensus-policies.htm.

iii. ICANN develops binding Consensus Policies through its policy development processes, in this case, through the GNSO[73].

17. **Recommendation 17 -- A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. Referring to the recommendations on contractual conditions above, this section sets out the discussion of the policies for contractual conditions for new top-level domain registry operators. The recommendations are consistent with the existing provisions for registry operators which were the subject of detailed community input throughout 2006[74].

iii. The Committee developed its recommendations during the Brussels and Amsterdam face-to-face consultations, with assistance from the ICANN General Counsel's office. The General Counsel's office has also provided a draft base contract which will be completed once the policy recommendations are agreed. Reference should also be made to Recommendation 5 on reserved words as some of the findings could be part of the base contract.

iv. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.

v. Since then ICANN has developed and published a new approach to its compliance activities. These are found on ICANN's website at http://www.icann.org/compliance/ and will be part of the development of base contract materials.

vi. The Committee found a number of expert reports[75] beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favouring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."

vii. The Recommendations which the Committee has developed with respect to the introduction of new TLDs are consistent with the World Bank principles.

18. **Recommendation 18 Discussion -- If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria. The introduction of internationalised domain names at the root presents ICANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical testing[76] has been completed and a series of live root tests will take place during the remainder of 2007.

ii. The Committee recognises that there is ongoing work in other parts of the ICANN organisation that needs to be factored into the application process that will apply to IDN applications. The work includes the President's Committee on IDNs and the GAC and ccNSO joint working group on IDNs.

19. **Recommendation 19 Discussion -- Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.**

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of VeriSign's registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars.

iii. In order to facilitate the stable and secure operation of the DNS, the Committee agreed that it was prudent to continue the current requirement that registry operators be obliged to use ICANN accredited registrars.

iv. ICANN's Registrar Accreditation Agreement has been in place since 2001[77]. Detailed information about the accreditation of registrars can be found on the ICANN website[78]. The accreditation process is under active discussion but the critical element of requiring the use of ICANN accredited registrars remains constant.

v. In its CIS, the RyC noted that "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

NEXT STEPS

1. Under the GNSO's Policy Development Process, the production of this *Final Report* completes Stage 9. The next steps are to conduct a twenty-day public comment period running from 10 August to 30 August 2007. The GNSO Council is due to meet on 6 September 2007 to vote on the package of principles, policy recommendations and implementation guidelines.

2. After the GNSO Council have voted the Council Report to the Board is prepared. The GNSO's PDP guidelines stipulate that "the Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

a. A clear statement of any Supermajority Vote recommendation of the Council;

b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;

c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;

d. An analysis of the period of time that would likely be necessary to implement the policy;

e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;

f. The Final Report submitted to the Council; and

g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

3. It is expected that, according to the Bylaws, "...The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN community or ICANN. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board."

4. The final stage in the PDP is the implementation of the policy which is also governed by the Bylaws as follows, "...Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy."

Annex A – NCUC Minority Statement: Recommendation 6

STATEMENT OF DISSENT ON RECOMMENDATION #6 OF

GNSO's NEW GTLD REPORT FROM

the Non-Commercial Users Constituency (NCUC)

20 July 2007

NCUC supports most of the recommendations in the GNSO's Final Report, but Recommendation #6 is one we cannot support.[79]

We oppose Recommendation #6 for the following reasons:

1) It will completely undermine ICANN's efforts to make the gTLD application process predictable, and instead make the evaluation process arbitrary, subjective and political;

2) It will have the effect of suppressing free and diverse expression;

3) It exposes ICANN to litigation risks;

4) It takes ICANN too far away from its technical coordination mission and into areas of legislating morality and public order.

We also believe that the objective of Recommendation #6 is unclear, in that much of its desirable substance is already covered by Recommendation #3. At a minimum, we believe that the words "relating to morality and public order" must be struck from the recommendation.

1) Predictability, Transparency and Objectivity

Recommendation #6 poses severe implementation problems. It makes it impossible to achieve the GNSO's goals of predictable and transparent evaluation criteria for new gTLDs.

Principle 1 of the New gTLD Report states that the evaluation process must be "predictable," and Recommendation #1 states that the evaluation criteria must be transparent, predictable, and fully available to applicants prior to their application.

NCUC strongly supports those guidelines. But no gTLD applicant can possibly know in advance what people or governments in a far away land will object to as "immoral" or contrary to "public order." When applications are challenged on these grounds, applicants cannot possibly know what decision an expert panel – which will be assembled on an ad hoc basis with no precedent to draw on – will make about it.

Decisions by expert panels on "morality and public order" *must* be subjective and arbitrary, because there is no settled and well-established international law regarding the relationship between TLD strings and morality and public order. There is no single "community standard" of morality that ICANN can apply to all applicants in every corner of the globe. What is considered "immoral" in Teheran may be easily accepted in Los Angeles or Stockholm; what is considered a threat to "public order" in China and Russia may not be in Brazil and Qatar.

2) Suppression of expression of controversial views

gTLD applicants will respond to the uncertainty inherent in a vague "morality and public order" standard and lack of clear standards by suppressing and avoiding any ideas that might generate controversy. Applicants will have to invest sizable sums of money to develop a gTLD application and see it through the ICANN process. Most of them will avoid risking a challenge under Recommendation #6. In other words, the presence of Recommendation #6 will result in self-censorship by most applicants.

That policy would strip citizens everywhere of their rights to express controversial ideas because someone else finds them offensive. This policy recommendation ignores international and national laws, in particular freedom of expression guarantees that permit the expression of "immoral" or otherwise controversial speech on the Internet.

3) Risk of litigation

Some people in the ICANN community are under the mistaken impression that suppressing controversial gTLDs will protect it from litigation. Nothing could be further from the truth. By introducing subjective and culturally divisive standards into the evaluation process Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department. It is undisputed that the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot "contract away" the constitutional protections of its citizens to ICANN any more than it can engage in the censorship itself.

Adoption of Recommendation #6 invites litigation against ICANN to determine whether its censorship policy is compatible with the US First Amendment. An ICANN decision to suppress a gTLD string that would be permitted under US law could and probably would lead to legal challenges to the decision as a form of US Government action.

If ICANN left the adjudication of legal rights up to courts, it could avoid the legal risk and legal liability that this policy of censorship brings upon it.

4) ICANN's mission and core values

Recommendation #6 exceeds the scope of ICANN's technical mission. It asks ICANN to create rules and adjudicate disputes about what is permissible expression. It enables it to censor expression in domain names that would be lawful in some countries. It would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "morality" judgments and other subjective criteria. Under Recommendation #6, ICANN will evaluate domain names based on ideas about "morality and public order" -- concepts for which there are varying interpretations, in both law and culture, in various parts of the world. Recommendation #6 risks turning ICANN into the arbiter of "morality" and "appropriate" public policy through global rules.

This new role for ICANN conflicts with its intended narrow technical mission, as embodied in its mission and core values. ICANN holds no legitimate authority to regulate in this entirely non-technical area and adjudicate the legal rights of others. This recommendation takes the adjudication of people's rights to use domain names out of the hands of democratically elected representatives and into the hands of "expert panels" or ICANN staff and board with no public accountability.

Besides exceeding the scope of ICANN's authority, Recommendation #6 seems unsure of its objective. It mandates "morality and public order" in domain names, but then lists, as examples of the type of rights to protect, the WTO TRIPS Agreement and all 24 World Intellectual Property (WIPO) Treaties, which deal with economic and trade rights, and have little to do with "morality and public order". Protection for intellectual property rights was fully covered in Recommendation #3, and no explanation has been provided as to why intellectual property rights would be listed again in a recommendation on "morality and public order", an entirely separate concept.

In conclusion Recommendation #6 exceeds ICANN's authority, ignores Internet users' free expression rights, and its adoption would impose an enormous burden on and liability for ICANN. It should not be adopted by the Board of Directors in the final policy decision for new gtlds.

Annex B – Nominating Committee Appointee Avri Doria[80]: Individual Comments

Comments from Avri Doria

The "Personal level of support" indications fall into 3 categories:

I Support: these are principles, recommendations or guidelines that are compatible with my personal opinions

I Support with concerns: While these principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.

I Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

Principles

#	Personal level of support	Explanation
A	Support	
B	Support with concerns	While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability.
E-G	Support	

Recommendations

#	Level of support	Explanation
1	Support	
2	Accept with concern	My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria. l In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on. l By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation. l As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages.
3	Support with concerns	My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system.
4	Support	
5	Support with concerns	Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.
6	Accept with concern	My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality.
7	Support	
8	Accept with concern	While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts. Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.
9,10, 12-14	Support	
15	Support with concerns	In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.
16-19	Support	

#	Level of support	Explanation
20	Support with concerns	In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)

Implementation Guidelines

#	Level of support	Explanation
A-E	Support	
F	Accept with concern	In designing a New gTLD process, one of the original design goals had been to design a predictable and timely process that did not include the involvement of the Board of Directors except for very rare and exceptional cases and perhaps in the due diligence check of a final approval. My concern is that the use of Board in step (iii) may make them a regular part of many of the application procedure and may overload both the Board and the process. If every dispute can fall through to Board consideration in the process sieve, then the incentive to resolve the dispute earlier will be lessened.
G-M	Support	
N	Support with concerns	I strongly support the idea of financial assistance programs and fee reduction for less developed communities. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the haves nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those with well developed funding capability will be able to participate in the process as currently planned.
O	Support	
P	Support with concerns	While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of the rich. I also believe that an objection policy based on financial means would allow for well endowed entities to object to any term they found objectionable, hence enabling them to be as vexatious as they wish to be. In order for an objection system to work properly, it must be fair and it must allow for any applicant to understand the basis on which they might have to answer an objection. If the policy and implementation are clear about objections only being considered when they can be shown to cause irreparable harm to a community then it may be possible to build a just process. In addition to the necessity for there to be strict filters on which potential objections are actually processed for further review by an objections review process, it is essential that an external and impartial professional review panel have a clear basis for judging any objections. I do not believe that the ability to pay for a review will provide a reasonable criteria, nor do I believe that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor. I believe that ICANN should investigate other methods for balancing the need to allow even the poorest to raise an issue of irreparable harm while filtering out unreasonable disputes. I believe, as recommend in the Reserved Names Working group report, that the ALAC and GAC may be an important part of the solution. IG (P) currently includes support for treating ALAC and GAC as established institutions in regard to raising objections to TLD concerns. I believe this is an important part of the policy recommendation and should be retained in the implementation. I believe that it should be possible for the ALAC or GAC, through some internal procedure that they define, to take up the cause of the individual complainant and to request a review by the external expert review panel. Some have argued that this is unacceptable because it operationalizes these Advisory Committees. I believe we do have precedence for such an operational role for volunteers within ICANN and that it is in keeping with their respective roles and responsibilities as representatives of the user community and of the international community of nations. I strongly recommend that such a solution be included in the Implementation of the New gTLD process.
Q	Support	

Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P

Statement of DISSENT on Recommendation #20 &

Implementation Guidelines F, H, & P in the

GNSO New GTLD Committee's Final Report

from the

Non-Commercial Users Constituency (NCUC)

RE: Domain Name Objection and Rejection Process

25 July 2007

Text of Recommendation #20:

"An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted."

Text of Implementation Guideline F:

If there is contention for strings, applicants may:

i) resolve contention between them within a pre-established timeframe

ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;

iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

Text of Implementation Guideline H:

External dispute providers will give decisions on complaints.

Text of Implementation Guideline P:

The following process, definitions, and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial

In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

b) significant portion:

In determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community

Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is impacted.

d) explicitly targeting

Explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting

Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution

An institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer then 5 years. Exceptional circumstance include but are not limited to reorganisation, merger, or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence

Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organisation or similar.

h) detriment

<< A >> Evidence of detriment to the community or to users more widely must be provided.

<< B >> [A likelihood of detriment to the community or to users more widely must be provided.]

Recommendation #20

The Non-Commercial Users Constituency (NCUC) Dissenting Statement on Recommendation #20 of the New GTLD Committee's Final Report[81] should be read in combination with Implementation Guidelines F, H & P, which detail the implementation of Recommendation #20. This statement should also be read in conjunction with its statement[82] of 13 June 2007 on the committee's draft report.

NCUC cannot support the committee's proposal for ICANN to establish a broad objection and rejection process for domain names that empowers ICANN and its "experts" to adjudicate the legal rights of domain name applicants (and objectors). The proposal would also empower ICANN and its "experts" to invent entirely new rights to domain names that do not exist in law and that will compete with existing legal rights to domains.

However "good-intentioned", the proposal would inevitably set up a system that decides legal rights based on subjective beliefs of "expert panels" and the amount of insider lobbying. The proposal would give "established institutions" veto power over applications for domain names to the detriment of innovators and start-ups. The proposal is further flawed because it makes no allowances for generic words to which no community claims exclusive "ownership" of. Instead, it wants to assign rights to use language based on subjective standards and will over-regulate to the detriment of competition, innovation, and free expression.

There is no limitation on the type of objections that can be raised to kill a domain name, no requirement that actual harm be shown to deny an application, and no recourse for the wrongful denial of legal rights by ICANN and its experts under this proposal. An applicant must be able to appeal decisions of ICANN and its experts to courts, who have more competence and authority to decide the applicant's legal rights. Legal due process requires maintaining a right to appeal these decisions to real courts.

The proposal is hopelessly flawed and will result in the improper rejection of many legitimate domain names. The reasons permitted to object to a domain are infinite in number. Anyone may make an objection; and an application will automatically be rejected upon a very low threshold of "detriment" or an even lower standard of "a likelihood of detriment" to anyone. Not a difficult bar to meet.

If ICANN attempted to put this policy proposal into practice it would intertwine itself in general policy debates, cultural clashes, business feuds, religious wars, and national politics, among a few of the disputes ICANN would have to rule on through this domain name policy.

The proposal operates under false assumptions of "communities" that can be defined, and that parties can be rightfully appointed representatives of "the community" by ICANN. The proposal gives preference to "established institutions" for domain names, and leaves applicants' without the backing of "established institutions" with little right to a top-level domain. The proposal operates to the detriment of small-scale start-ups and innovators who are clever enough to come up with an idea for a domain first, but lack the insider-connections and financial resources necessary to convince an ICANN panel of their worthiness.

It will be excessively expensive to apply for either a controversial or a popular domain name, so only well-financed "established institutions" will have both the standing and financial wherewithal to be awarded a top-level domain. The proposal privileges who is awarded a top-level domain, and thus discourages diversity of thought and the free flow of information by making it more difficult to obtain information on controversial ideas or from innovative new-comers.

Implementation Guideline F

NCUC does not agree with the part of Implementation Guideline F that empowers ICANN identified "communities" to support or oppose applications. Why should all "communities" agree before a domain name can be issued? How to decide who speaks for a "community"?

NCUC also notes that ICANN's Board of Directors would make the final decisions on applications and thus the legal rights of applicants under proposed IG-F. ICANN Board Members are not democratically elected, accountable to the public in any meaningful way, or trained in the adjudication of legal rights. Final decisions regarding legal rights should come from legitimate law-making processes, such as courts.

"Expert panels" or corporate officers are not obligated to respect an applicant's free expression rights and there is no recourse for a decision by the panel or ICANN for rights wrongfully denied. None of the "expert" panelists are democratically elected, nor accountable to the public for their decisions. Yet they will take decisions on the boundaries between free expression and trademark rights in domain names; and "experts" will decide what ideas are too controversial to be permitted in a domain name under this process.

Implementation Guideline H

Implementation Guideline H recommends a system to adjudicate legal rights that exists entirely outside of legitimate democratic law-making processes. The process sets up a system of unaccountable "private law" where "experts" are free to pick and choose favored laws, such as trademark rights, and ignore disfavored laws, such as free expression guarantees.

IG-H operates under the false premise that external dispute providers are authorized to adjudicate the legal rights of domain name applicants and objectors. It further presumes that such expert panels will be qualified to adjudicate the legal rights of applicants and others. But undertaking the creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not something that can be delegated to a team of experts. Existing international law that takes into account conflict of laws, choice of laws, jurisdiction, standing, and due process must be part of any legitimate process; and the applicant's legal rights including freedom of expression rights must be respected in the process.

Implementation Guideline P

"The devil is in the details" of Implementation Guideline P as it describes in greater detail the proposed adversarial dispute process to adjudicate legal rights to top-level domain names in Recommendation #20. IG-P mandates the rejection of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such as way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for the maximum number of objections to a domain name to count against an application. It includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application. It also includes any "related community which believes it is impacted." So anyone who claims to represent a community and believes to be impacted by a domain name can file a complaint and have standing to object to another's application.

There is no requirement that the objection be based on legal rights or the operational capacity of the applicant. There is no requirement that the objection be reasonable or the belief about impact to be reasonable. There is no requirement that the harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implicitly targeting" further confirms this subjective standard by inviting objections where "the objector makes the assumption of targeting" and also where "the objector believes there may be confusion by users". Such a subjective process will inevitably result in the rejection of many legitimate domain names.

Picking such a subjective standard conflicts with Principle A in the Final Report that states domain names must be introduced in a "predictable way", and also with Recommendation 1 that states "All applicants for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." The subjectivity and unpredictability invited into the process by Recommendation #20 turn Principle A and Recommendation 1 from the same report upside down.

Besides the inherent subjectivity, the standard for killing applications is remarkably low. An application need not be intended to serve a particular community for "community-based" objections to kill the application under the proposal. Anyone who believed that he or she was part of the targeted community or who believes others face "detriment" have standing to object to a domain name, and the objection weighs in favor of "significant opposition". This standard is even lower than the "reasonable person" standard, which would at least require that the belief be "reasonable" for it to count against an applicant. The proposed standard for rejecting domains is so low it even permits unreasonable beliefs about a domain name to weigh against an applicant.

If a domain name does cause confusion, existing trademark law and unfair competition law have dealt with it for years and already balanced intellectual property rights against free expression rights in domain names. There is neither reason nor authority for ICANN processes to overtake the adjudication of legal rights and invite unreasonable and illegitimate objections to domain names.

IG-P falsely assumes that the number of years in operation is indicative of one's right to use language. It privileges entities over 5 years old with objection rights that will effectively veto innovative start-ups who cannot afford the dispute resolution process and will be forced to abandon their application to the incumbents.

IG-P sets the threshold for harm that must be shown to kill an application for a domain name remarkably low. Indeed harm need not be actual or verified for an application to be killed based on "substantial opposition" from a single objector.

Whether the committee selects the unbounded definition for "detriment" that includes a "likelihood of detriment" or the narrower definition of "evidence of detriment" as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to re-arranging the deck chairs on the Titanic. ICANN will become bogged down with the approval of domain names either way, although it is worth noting that "likelihood of detriment" is a very long way from "substantial harm" and an easy standard to meet, so will result in many more domain names being rejected.

The definitions and guidelines detailed in IG-P invite a lobby-fest between competing businesses, instill the "heckler's veto" into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant's jurisdiction before it can rejected.

In conclusion, the committee's recommendation for domain name objection and rejection processes are far too broad and unwieldy to be put into practice. They would stifle freedom of expression, innovation, cultural diversity, and market competition. Rather than follow existing law, the proposal would set up an illegitimate process that usurps jurisdiction to adjudicate peoples' legal rights (and create new rights) in a process designed to favor incumbents. The adoption of this "free-for-all" objection and rejection process will further call into question ICANN's legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that ICANN will best serve the global public interest by resisting the temptation to stray from its technical mandate and meddle in international lawmaking as proposed by Rec. #20 and IG-F, IG-H, and IG-P of the New GTLD Committee Final Report.

REFERENCE MATERIAL -- GLOSSARY[83]

TERM	ACRONYM & EXPLANATION

A-label	The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di".
ASCII Compatible Encoding	ACE ACE is a system for encoding Unicode so each character can be transmitted using only the letters a-z, 0-9 and hyphens. Refer also to http://www.ietf.org/rfc/rfc3467.txt?number=3467
American Standard Code for Information Exchange	ASCII ASCII is a common numerical code for computers and other devices that work with text. Computers can only understand numbers, so an ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information.
Advanced Research Projects Agency	ARPA http://www.darpa.mil/body/arpa_darpa.html
Commercial & Business Users Constituency	CBUC http://www.bizconst.org/
Consensus Policy	A defined term in all ICANN registry contracts usually found in Article 3 (Covenants). See, for example, http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm
Country Code Names Supporting Organization	ccNSO http://ccnso.icann.org/
Country Code Top Level Domain	ccTLD Two letter domains, such as .uk (United Kingdom), .de (Germany) and .jp (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country. Some ICANN-accredited registrars provide registration services in the ccTLDs in addition to registering names in .biz, .com, .info, .name, .net and .org, however, ICANN does not specifically accredit registrars to provide ccTLD registration services. For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to http://www.iana.org/cctld/cctld.htm.
Domain Names	The term **domain name** has multiple related meanings: A name that identifies a computer or computers on the internet. These names appear as a component of a Web site's URL, e.g. www.wikipedia.org. This type of domain name is also called a hostname. The product that Domain name registrars provide to their customers. These names are often called **registered domain names**. Names used for other purposes in the Domain Name System (DNS), for example the special name which follows the @ sign in an email address, or the Top-level domains like .com, or the names used by the Session Initiation Protocol (VoIP), or DomainKeys. http://en.wikipedia.org/wiki/Domain_names
Domain Name System	The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.

Generic Top Level Domain	gTLD Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" TLDs (sTLDs) and "unsponsored TLDs (uTLDs), as described in more detail below. In the 1980s, seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org) were created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the other four have limited purposes. In 2001 & 2002 four new unsponsored TLDs (.biz, .info, .name, and .pro) were introduced. The other three new TLDs (.aero, .coop, and .museum) were sponsored. Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD.
Governmental Advisory Committee	GAC http://gac.icann.org/web/index.shtml
Intellectual Property Constituency	IPC http://www.ipconstituency.org/
Internet Service & Connection Providers Constituency	ISPCP
Internationalized Domain Names	IDNs IDNs are domain names represented by local language characters. These domain names may contain characters with diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese.
Internationalized Domain Names in Application	IDNA IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF (http://www.ietf.org)
Internationalized Domain Names – Labels	IDN A Label The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible ACE) form of an IDN A string. For example "xn-1lq90i". IDN U Label The U-label is what should be displayed to the user and is the representation of the IDN in Unicode. For example "北京" ("Beijing" in Chinese). LDH Label The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org"
Internationalized Domain Names Working Group	IDN-WG http://forum.icann.org/lists/gnso-idn-wg/
Letter Digit Hyphen	LDH The hostname convention used by domain names before internationalization. This meant that domain names could only practically contain the letters a-z, digits 0-9 and the hyphen "-". The term "LDH code points" refers to this subset. With the introduction of IDNs this rule is no longer relevant for all domain names. The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org".

Nominating Committee	NomCom http://nomcom.icann.org/
Non-Commercial Users Constituency	NCUC http://www.ncdnhc.org/
Policy Development Process	PDP See http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA
Protecting the Rights of Others Working Group	PRO-WG See the mailing list archive at http://forum.icann.org/lists/gnso-pro-wg/
Punycode	Punycode is the ASCII-compatible encoding algorithm described in Internet standard [RFC3492]. This is the method that will encode IDNs into sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters.
Registrar	Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory. The registrar asks registrants to provide various contact and technical information that makes up the domain name registration. The registrar keeps records of the contact information and submits the technical information to a central directory known as the "registry."
Registrar Constituency	RC http://www.icann-registrars.org/
Registry	A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.
Registry Constituency	RyC http://www.gtldregistries.org/
Request for Comment A full list of all Requests for Comment http://www.rfc-editor.org/rfcxx00.html Specific references used in this report are shown in the next column. This document uses language, for example, "should", "must" and "may", consistent with RFC2119.	RFC ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt
Reserved Names Working Group	RN-WG See the mailing list archive at http://forum.icann.org/lists/gnso-rn-wg/

Root server	A **root nameserver** is a DNS server that answers requests for the root namespace domain, and redirects requests for a particular top-level domain to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the Internet's official global implementation of the Domain Name System. All domain names on the Internet can be regarded as ending in a full stop character e.g. "en.wikipedia.org.". This final dot is generally implied rather than explicit, as modern DNS software does not actually require that the final dot be included when attempting to translate a domain name to an IP address. The empty string after the final dot is called the root domain, and all other domains (i.e. .com, .org, .net, etc.) are contained within the root domain.http://en.wikipedia.org/wiki/Root_server
Sponsored Top Level Domain	sTLD A Sponsor is an organization to which some policy making is delegated from ICANN. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.
U-label	The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.
Unicode Consortium	A not-for-profit organization found to develop, extend and promote use of the Unicode standard. Seehttp://www.unicode.org
Unicode	Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character identified. These tables continue to expand as more characters are digitalized.

Continue to Final Report: Part B

[1] http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#I

[2] The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. http://www.icann.org/structure/

[3] The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA.

[4] Found here http://gnso.icann.org/issues/new-gtlds/.

[5] The ICANN Staff *Discussion Points* documents can be found at http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf andhttp://gnso.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf

[6] Authored in 1987 by Paul Mockapetris and found at http://www.ietf.org/rfc/rfc1034

[7] Authored in October 1984 by Jon Postel and J Reynolds and found at http://www.ietf.org/rfc/rfc920

[8] Found at http://www.oecd.org/dataoecd/15/37/38336539.pdf

[9] From Verisign's June 2007 *Domain Name Industry Brief.*

[10] The full list is available here http://www.icann.org/registrars/accredited-list.html

[11] Report found at http://www.icann.org/dnso/wgc-report-21mar00.htm

[12] Found at http://www.icann.org/announcements/announcement-31aug04.htm

[13] http://www.registrarstats.com/Public/ZoneFileSurvey.aspx

[14] Verisign produce a regular report on the domain name industry. http://www.verisign.com/Resources/Naming_Services_Resources/Domain_Name…

[15] The announcement is here http://icann.org/announcements/announcement-03jan06.htm and the results are here http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm

[16] Found here http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm

[17] http://gnso.icann.org/issues/new-gtlds//

[18] For example, see the GA List discussion thread found at http://gnso.icann.org/mailing-lists/archives/ga/msg03337.html & earlier discussion on IANA listshttp://www.iana.org/comments/26sep1998-02oct1998/msg00016.html. The 13 June 2002 paper regarding a taxonomy for non-ASCII TLDs is also illuminatinghttp://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm

[19] Found here http://gac.icann.org/web/home/gTLD_principles.pdf

[20] A list of the working materials of the new TLDs Committee can be found at http://gnso.icann.org/issues/new-gtlds/.

[21] The Outcomes Report for the IDN-WG is found http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm. A full set of resources which the WG is using is found athttp://gnso.icann.org/issues/idn-tlds/.

[22] The Final Report of the RN-WG is found at http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf

[23] The Final Report of the PRO-WG is found at http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf

[24] The root server system is explained here http://en.wikipedia.org/wiki/Rootserver

[25] Ms Doria supports all of the Principles but expressed concern about Principle B by saying "...While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers" and Principle D "...While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability."

[26] Note the updated recommendation text sent to the gtld-council list after the 7 June meeting. http://forum.icann.org/lists/gtld-council/msg00520.html

[27] Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.

[28] http://www.icann.org/general/idn-guidelines-22feb06.htm

[29] The Implementation Team sought advice from a number of auction specialists and examined other industries in which auctions were used to make clear and binding decisions. Further expert advice will be used in developing the implementation of the application process to ensure the fairest and most appropriate method of resolving contention for strings.

[30] Detailed work is being undertaken, lead by the Corporate Affairs Department, on establishing a translation framework for ICANN documentation. This element of the Implementation Guidelines may be addressed separately.

[31] http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf

[32] Consistent with ICANN's commitments to accountability and transparency found at http://www.icann.org/announcements/announcement-26jan07b.htm

[33] Found at http://www.icann.org/dnso/wgc-report-21mar00.htm

[34] The announcement is here http://icann.org/announcements/announcement-03jan06.htm and the results are here http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm

[35] Found here http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm

[36] Found here http://forum.icann.org/lists/gtld-council/

[37] Archived at http://forum.icann.org/lists/gtld-council/

[38] Business Constituency http://forum.icann.org/lists/gtld-council/msg00501.html, Intellectual Property Constituency http://forum.icann.org/lists/gtld-council/msg00514.html, Internet Service Providers http://forum.icann.org/lists/gtld-council/msg00500.html, NCUC http://forum.icann.org/lists/gtld-council/msg00530.html, Registry Constituencyhttp://forum.icann.org/lists/gtld-council/msg00494.html

[39] "My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.

In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."

[40] http://data.iana.org/TLD/tlds-alpha-by-domain.txt

[41] See section 4A -- http://www.icann.org/udrp/udrp-policy-24oct99.htm.

[42] In addition to the expertise within the Committee, the NCUC provided, as part of its Constituency Impact Statement expert outside advice from Professor Christine Haight Farley which said, in part, "...A determination about whether use of a mark by another is "confusingly similar" is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not like to cause confusion, and therefore do not infringe. ... In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily that U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of confusion". However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used."

[43] In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

[44] Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online athttp://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm

"...*Article 16 Rights Conferred* 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use...."

[45] http://www.ohchr.org/english/bodies/hrc/comments.htm

[46] http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf

[47] Charles Sha'ban provided a range of examples from Arabic speaking countries. For example, in Jordan, Article 7 Trademarks eligible for registration are 1- A trademark shall be registered if it is distinctive, as to words, letters, numbers, figures, colors, or other signs or any combination thereof and visually perceptible. 2- For the purposes of this Article, "distinctive" shall mean applied in a manner which secures distinguishing the goods of the proprietor of the trademark from those of other persons. Article 8 Marks which may not be registered as trademarks. The following may not be registered as trademarks: 10- A mark identical with one belonging to a different proprietor which is already entered in the register in respect of the same goods or class of goods for which the mark is intended to be registered, or so closely resembling such trademark to the extent that it may lead to deceiving third parties.

12- The trademark which is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods as well as the marks which are similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organizations or those that offend our Arab and Islamic age-old values.

In Oman for example, Article 2 of the Sultan Decree No. 38/2000 states:

"The following shall not be considered as trademarks and shall not be registered as such: If the mark is identical, similar to a degree which causes confusion, or a translation of a trademark or a commercial name known in the Sultanate of Oman with respect to identical or similar goods or services belonging to another business, or if it is known and registered in the Sultanate of Oman on goods and service which are neither identical nor similar to those for which the mark is sought to be registered provided that the usage of the mark on those goods or services in this last case will suggest a connection between those goods or services and the owner of the known trademark and such use will cause damage to the interests of the owner of the known trademark."

Although the laws In Egypt do not have specific provisions regarding confusion they stress in great detail the importance of distinctiveness of a trade mark.

Article 63 in the IP Law of Egypt No.82 for the year 2002 states:

"A trademark is any sign distinguishing goods, whether products or services, and include is particular names represented in a distinctive manner, signatures, words, letters, numerals, design, symbols, signposts, stamps, seal, drawings, engravings, a combination of distinctly formed colors and any other combination of these elements if used, or meant to be used, to distinguish the precedents of a particular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods or their quality, category, guarantee, preparation process, or to indicate the provision of any service. In all cases, a trademark shall be a sign that is recognizable by sight."

[48] Found at http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.ht with 171 contracting parties.

[49] Further information can be found at the US Patent and Trademark Office's website http://www.uspto.gov/

[50] Found at http://www.icann.org/registrars/ra-agreement-17may01.htm#3

[51] Found at http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm.

[52] The 2003 correspondence between ICANN's then General Counsel and the then GAC Chairman is also useful http://www.icann.org/correspondence/touton-letter-to-tarmizi-10feb03.htm.

[53] "My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system."

[54] For example, David Maher, Jon Bing, Steve Metalitz, Philip Sheppard and Michael Palage.

[55] Reserved Word has a specific meaning in the ICANN context and includes, for example, the reserved word provisions in ICANN's existing registry contracts. Seehttp://www.icann.org/registries/agreements.htm.

[56] "Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration."

[57] Found online at http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm and in full in Part B of the *Report.*

[58] The Committee are aware that the terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in other context. The terminology may be imprecise in other contexts than the general discussion about reserved words found here.

[59] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[60] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[61] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[62] Internet Draft IDNAbis Issues: http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt (J. Klensin), Section 3.1.1.1

[63] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[64] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[65] With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings for new TLDs may surface during one or more public comment periods.

[66] Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[67] Ms Doria said "...My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality."

[68] http://www.icann.org/tlds/agreements/net/appendix7.html

[69] 'While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.

Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels."

[70] "In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)".

[71] "In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal."

[72] Consensus Policies has a particular meaning within the ICANN environment. Refer to http://www.icann.org/general/consensus-policies.htm for the full list of ICANN's Consensus Policies.

[73] http://www.icann.org/general/bylaws.htm#AnnexA

[74] http://www.icann.org/registries/agreements.htm

[75] The full list of reports is found in the Reference section at the end of the document.

[76] http://www.icann.org/announcements/announcement-4-07mar07.htm

[77] Found at http://www.icann.org/registrars/ra-agreement-17may01.htm

[78] Found at http://www.icann.org/registrars/accreditation.htm.

[79] Text of Recommendation #6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."

[80] Ms Doria took over from former GNSO Council Chairman (and GNSO new TLDs Committee Chairman) Dr Bruce Tonkin on 7 June 2007. Ms Doria's term runs until 31 January 2008.

[81] Available at: http://forum.icann.org/lists/gtld-council/pdfOQqgaRNrXf.pdf

[82] Available at: http://ipjustice.org/wp/2007/06/13/ncuc-newgtld-stmt-june2007/

[83] This glossary has been developed over the course of the policy development process. Refer here to ICANN's glossary of terms http://www.icann.org/general/glossary.htmfor further information.

Ex. R-4

RESPONDENT'S EXHIBIT

Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy

Adopted Board Resolutions | Paris

26 Jun 2008

- Approval of Minutes
- GNSO Recommendations on New gTLDs
- IDNC / IDN Fast-track
- GNSO Recommendation on Domain Tasting
- Approval of Operating Plan and Budget for Fiscal Year 2008-2009
- Update on Draft Amendments to the Registrar Accreditation Agreement
- Approval of PIR Request to Implement DNSSEC in .ORG
- ICANN Board of Directors' Code of Conduct
- Ratification of Selection of Consultant to Conduct Independent Review of the Board
- Appointment of Independent Review Working Groups
- Update on Independent Reviews of ICANN Structures
- Board Committee Assignment Revisions
- Approval of BGC Recommendations on GNSO Improvements
- Receipt of Report of President's Strategy Committee Consultation
- Selection of Mexico City for March 2009 ICANN Meeting
- Review of Paris Meeting Structure
- Board Response to Discussions Arising from Paris Meeting
- ICANN At-Large Summit Proposal
- Other Business
- Thanks to Steve Conte
- Thanks to Sponsors
- Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

Approval of Minutes

Operational Design Phase (ODP)

Implementation

Public Comment

Root Zone KSK Rollover

Technical Functions

Contact

Help

Resolved (2008.06.26.01), the minutes of the Board Meeting of 29 May 2008 are approved. <http://www.icann.org/minutes/prelim-report-29may08.htm>

| back to top |

GNSO Recommendations on New gTLDs

Whereas, the GNSO initiated a policy development process on the introduction of New gTLDs in December 2005. <http://gnso.icann.org/issues/new-gtlds/>

Whereas, the GNSO Committee on the Introduction of New gTLDs addressed a range of difficult technical, operational, legal, economic, and policy questions, and facilitated widespread participation and public comment throughout the process.

Whereas, the GNSO successfully completed its policy development process on the Introduction of New gTLDs and on 7 September 2007, and achieved a Supermajority vote on its 19 policy recommendations. <http://gnso.icann.org/meetings/minutes-gnso-06sep07.shtml>

Whereas, the Board instructed staff to review the GNSO recommendations and determine whether they were capable of implementation.

Whereas, staff has engaged international technical, operational and legal expertise to provide counsel on details to support the implementation of the Policy recommendations and as a result, ICANN cross-functional teams have developed implementation details in support of the GNSO's policy recommendations, and have concluded that the recommendations are capable of implementation.

Whereas, staff has provided regular updates to the community and the Board on the implementation plan. <http://icann.org/topics/new-gtld-program.htm>

Whereas, consultation with the DNS technical community has led to the conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns. <http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf>

Whereas, the Board recognizes that the process will need to be resilient to unforeseen circumstances.

Whereas, the Board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN's supporting organizations and advisory committees in the implementation plan.

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>.

Resolved (2008.06.26.03), the Board directs staff to continue to further develop and

complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the new gTLD introduction process is launched.

| back to top |

IDNC / IDN Fast-track

Whereas, the ICANN Board recognizes that the "IDNC Working Group" developed, after extensive community comment, a final report on feasible methods for timely (fast-track) introduction of a limited number of IDN ccTLDs associated with ISO 3166-1 two-letter codes while an overall, long-term IDN ccTLD policy is under development by the ccNSO.

Whereas, the IDNC Working Group has concluded its work and has submitted recommendations for the selection and delegation of "fast-track" IDN ccTLDs and, pursuant to its charter, has taken into account and was guided by consideration of the requirements to:

- Preserve the security and stability of the DNS;
- Comply with the IDNA protocols;
- Take input and advice from the technical community with respect to the implementation of IDNs; and
- Build on and maintain the current practices for the delegation of ccTLDs, which include the current IANA practices.

Whereas, the IDNC Working Group's high-level recommendations require implementation planning.

Whereas, ICANN is looking closely at interaction with the final IDN ccTLD PDP process and potential risks, and intends to implement IDN ccTLDs using a procedure that will be resilient to unforeseen circumstances.

Whereas, staff will consider the full range of implementation issues related to the introduction of IDN ccTLDs associated with the ISO 3166-1 list, including means of promoting adherence to technical standards and mechanisms to cover the costs associated with IDN ccTLDs.

Whereas, the Board intends that the timing of the process for the introduction of IDN ccTLDs should be aligned with the process for the introduction of New gTLDs.

Resolved (2008.06.26.04), the Board thanks the members of the IDNC WG for completing their chartered tasks in a timely manner.

Resolved (2008.06.26.05), the Board directs staff to: (1) post the IDNC WG final report for public comments; (2) commence work on implementation issues in consultation with relevant stakeholders; and (3) submit a detailed implementation report including a list of any outstanding issues to the Board in advance of the ICANN Cairo meeting in

November 2008.

| back to top |

GNSO Recommendation on Domain Tasting

Whereas, ICANN community stakeholders are increasingly concerned about domain tasting, which is the practice of using the add grace period (AGP) to register domain names in bulk in order to test their profitability.

Whereas, on 17 April 2008, the GNSO Council approved, by a Supermajority vote, a motion to prohibit any gTLD operator that has implemented an AGP from offering a refund for any domain name deleted during the AGP that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. <http://gnso.icann.org/meetings/minutes-gnso-17apr08.shtml>

Whereas, on 25 April 2008, the GNSO Council forwarded its formal "Report to the ICANN Board - Recommendation for Domain Tasting" <http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf>, which outlines the full text of the motion and the full context and procedural history of this proceeding.

Whereas, the Board is also considering the Proposed FY 09 Operating Plan and Budget <http://www.icann.org/financials/fiscal-30jun09.htm>, which includes (at the encouragement of the GNSO Council) a proposal similar to the GNSO policy recommendation to expand the applicability of the ICANN transaction fee in order to limit domain tasting.

Resolved (2008.06.26.06), the Board adopts the GNSO policy recommendation on domain tasting, and directs staff to implement the policy following appropriate comment and notice periods on the implementation documents.

| back to top |

Approval of Operating Plan and Budget for Fiscal Year 2008-2009

Whereas, ICANN approved an update to the Strategic Plan in December 2007. < http://www.icann.org/strategic-plan/>

Whereas, the Initial Operating Plan and Budget Framework for fiscal year 2009 was presented at the New Delhi ICANN meeting and was posted in February 2008 for community consultation. <http://www.icann.org/announcements/announcement-2-04feb08.htm>

Whereas, community consultations were held to discuss and obtain feedback on the Initial Framework.

Whereas, the draft FY09 Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 17 May 2008 based upon the Initial Framework, community consultation, and consultations with the Board Finance Committee. A slightly revised version was posted on 23 May 2008.

<http://www.icann.org/financials/fiscal-30jun09.htm>

Whereas, ICANN has actively solicited community feedback and consultation with ICANN's constituencies. <http://forum.icann.org/lists/op-budget-fy2009/>

Whereas, the ICANN Board Finance Committee has discussed, and guided staff on, the FY09 Operating Plan and Budget at each of its regularly scheduled monthly meetings.

Whereas, the final FY09 Operating Plan and Budget was posted on 26 June 2008. <http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf>

Whereas, the ICANN Board Finance Committee met in Paris on 22 June 2008 to discuss the FY09 Operating Plan and Budget, and recommended that the Board adopt the FY09 Operating Plan and Budget.

Whereas, the President has advised that the FY09 Operating Plan and Budget reflects the work of staff and community to identify the plan of activities, the expected revenue, and resources necessary to be spent in fiscal year ending 30 June 2009.

Whereas, continuing consultation on the budget has been conducted at ICANN's meeting in Paris, at constituency meetings, and during the public forum.

Resolved (2008.06.26.07), the Board adopts the Fiscal Year 2008-2009 Operating Plan and Budget. <http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf>

| back to top |

Update on Draft Amendments to the Registrar Accreditation Agreement

(For discussion only.)

| back to top |

Approval of PIR Request to Implement DNSSEC in .ORG

Whereas, Public Interest Registry has submitted a proposal to implement DNS Security Extensions (DNSSEC) in .ORG. <http://icann.org/registries/rsep/pir-request-03apr08.pdf>

Whereas, staff has evaluated the .ORG DNSSEC proposal as a new registry service via the Registry Services Evaluation Policy <http://icann.org/registries/rsep/>, and the proposal included a requested amendment to Section 3.1(c)(i) of the .ORG Registry Agreement <http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf> which was posted for public comment along with the PIR proposal.

Whereas, the evaluation under the threshold test of the Registry Services Evaluation Policy <http://icann.org/registries/rsep/rsep.html> found a likelihood of security and stability issues associated with the proposed implementation. The RSTEP Review

Team considered the proposal and found that there was a risk of a meaningful adverse effect on security and stability, which could be effectively mitigated by policies, decisions and actions to which PIR has expressly committed in its proposal or could be reasonably required to commit. <http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>

Whereas, the Chair of the SSAC has advised that RSTEP's thorough investigation of every issue that has been raised concerning the security and stability effects of DNSSEC deployment concludes that effective measures to deal with all of them can be taken by PIR, and that this conclusion after exhaustive review greatly increases the confidence with which DNSSEC deployment in .ORG can be undertaken.

Whereas, PIR intends to implement DNSSEC only after extended testing and consultation.

Resolved (2008.06.26.08), that PIR's proposal to implement DNSSEC in .ORG is approved, with the understanding that PIR will continue to cooperate and consult with ICANN on details of the implementation. The President and the General Counsel are authorized to enter the associated amendment to the .ORG Registry Agreement, and to take other actions as appropriate to enable the deployment of DNSSEC in .ORG.

| back to top |

ICANN Board of Directors' Code of Conduct

Whereas, the members of ICANN's Board of Directors are committed to maintaining a high standard of ethical conduct.

Whereas, the Board Governance Committee has developed a Code of Conduct to provide the Board with guiding principles for conducting themselves in an ethical manner.

Resolved (2008.06.26.09), the Board directs staff to post the newly proposed ICANN Board of Directors' Code of Conduct for public comment, for consideration by the Board as soon as feasible. [Reference to PDF will be inserted when posted.]

| back to top |

Ratification of Selection of Consultant to Conduct Independent Review of the Board

Whereas, the Board Governance Committee has recommended that Boston Consulting Group be selected as the consultant to perform the independent review of the ICANN Board.

Whereas, the BGC's recommendation to retain BCG was approved by the Executive Committee during its meeting on 12 June 2008.

Resolved (2008.06.26.10), the Board ratifies the Executive Committee's approval of the Board Governance Committee's recommendation to select Boston Consulting Group as the consultant to perform the independent review of the ICANN Board.

| back to top |

Appointment of Independent Review Working Groups

Whereas, the Board Governance Committee has recommended that several working groups should be formed to coordinate pending independent reviews of ICANN structures.

Resolved (2008.06.26.11), the Board establishes the following independent review working groups:

- ICANN Board Independent Review Working Group: Amadeu Abril i Abril, Roberto Gaetano (Chair), Steve Goldstein, Thomas Narten, Rajasekhar Ramaraj, Rita Rodin, and Jean Jacques Subrenat.
- DNS Root Server System Advisory Committee (RSSAC) Independent Review Working Group: Harald Alvestrand (Chair), Steve Crocker and Bruce Tonkin.
- Security and Stability Advisory Committee (SSAC) Independent Review Working Group: Robert Blokzijl, Dennis Jennings (Chair), Reinhard Scholl and Suzanne Woolf.

| back to top |

Update on Independent Reviews of ICANN Structures

(For discussion only.)

| back to top |

Board Committee Assignment Revisions

Whereas, the Board Governance Committee has recommended that the membership of several Board should be revised, and that all other committees should remain unchanged until the 2008 Annual Meeting.

Resolved (2008.06.26.12), the membership of the Audit, Finance, and Reconsideration committees are revised as follows:

- Audit Committee: Raimundo Beca, Demi Getschko, Dennis Jennings, Njeri Rionge and Rita Rodin (Chair).
- Finance Committee: Raimundo Beca, Peter Dengate Thrush, Steve Goldstein, Dennis Jennings, Rajasekhar Ramaraj (Chair), and Bruce Tonkin (as observer).
- Reconsideration Committee: Susan Crawford (Chair), Demi Getschko, Dennis Jennings, Rita Rodin, and Jean-Jacques Subrenat.

| back to top |

Approval of BGC Recommendations on GNSO Improvements

Whereas, Article IV, Section 4 of ICANN's Bylaws calls for periodic reviews of the performance and operation of ICANN's structures by an entity or entities independent of the organization under review.

Whereas, the Board created the "Board Governance Committee GNSO Review Working Group" (Working Group) to consider the independent review of the GNSO and other relevant input, and recommend to the Board Governance Committee a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

Whereas, the Working Group engaged in extensive public consultation and discussions, considered all input, and developed a final report <http://www.icann.org/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf> containing a comprehensive and exhaustive list of proposed recommendations on GNSO improvements.

Whereas, the Board Governance Committee determined that the GNSO Improvements working group had fulfilled its charter and forwarded the final report to the Board for consideration.

Whereas, a public comment forum was held open for 60 days to receive, consider and summarize <http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html> public comments on the final report.

Whereas, the GNSO Council and Staff have worked diligently over the past few months to develop a top-level plan for approaching the implementation of the improvement recommendations, as requested by the Board at its New Delhi meeting.

Whereas, ICANN has a continuing need for a strong structure for developing policies that reflect to the extent possible a consensus of all stakeholders in the community including ICANN's contracted parties.

Resolved (2008.06.26.13), the Board endorses the recommendations of the Board Governance Committee's GNSO Review Working Group, other than on GNSO Council restructuring, and requests that the GNSO convene a small working group on Council restructuring including one representative from the current NomCom appointees, one member from each constituency and one member from each liaison-appointing advisory committee (if that advisory committee so desires), and that this group should reach consensus and submit a consensus recommendation on Council restructuring by no later than 25 July 2008 for consideration by the ICANN Board as soon as possible, but no later than the Board's meeting in August 2008.

| back to top |

Receipt of Report of President's Strategy Committee Consultation

Whereas, the Chairman of the Board requested that the President's Strategy Committee undertake a process on how to strengthen and complete the ICANN multi-stakeholder model.

Whereas, the PSC has developed three papers that outline key areas and possible

responses to address them: "Transition Action Plan," "Improving Institutional Confidence in ICANN," and "FAQ." <http://icann.org/en/announcements/announcement-16jun08-en.htm >

Whereas, these documents and the proposals contained in them have been discussed at ICANN's meeting in Paris.

Whereas, a dedicated webpage has been launched to provide the community with information, including regular updates <http://icann.org/jpa/iic/>.

Resolved (2008.06.26.14), the Board thanks the President's Strategy Committee for its work to date, and instructs ICANN staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN community to participate in the continuing consultations on the future of ICANN by reviewing and submitting comments to the PSC by 31 July 2008.

Selection of Mexico City for March 2009 ICANN Meeting

Whereas, ICANN intends to hold its first meeting for calendar year 2009 in the Latin America region;

Whereas, the Mexican Internet Association (AMIPCI) has agreed to host the meeting;

Resolved (2008.06.26.15), the Board accepts the AMIPCI proposal to host ICANN's 34th global meeting in Mexico City, in March 2009.

Review of Paris Meeting Structure

(For discussion only.)

| back to top |

Board Response to Discussions Arising from Paris Meeting

(For discussion only.)

| back to top |

ICANN At-Large Summit Proposal

Whereas, at the ICANN meeting in New Delhi in February 2008, the Board resolved to direct staff to work with the ALAC to finalise a proposal to fund an ICANN At-Large Summit, for consideration as part of the 2008-2009 operating plan and budget process. <http://www.icann.org/minutes/resolutions-15feb08.htm>

Whereas, potential funding for such a summit has been identified in the FY09 budget. <http://www.icann.org/financials/fiscal-30jun09.htm>

Whereas, a proposal for the Summit was completed and submitted shortly before the ICANN Meeting in Paris.

Resolved (2008.06.26.16), the Board approves the proposal to hold an ICANN At-Large Summit as a one-time special event, and requests that the ALAC work with ICANN Staff to implement the Summit in a manner that achieves efficiency, including considering the Mexico meeting as the venue.

Resolved (2008.06.26.17), with the maturation of At-Large and the proposal for the At-Large Summit's objectives set out, the Board expects the ALAC to look to more self-funding for At-Large travel in the fiscal year 2010 plan, consistent with the travel policies of other constituencies.

| back to top |

Other Business

(TBD)

| back to top |

Thanks to Steve Conte

Whereas, Steve Conte has served as an employee of ICANN for over five years.

Whereas, Steve has served ICANN in a number of roles, currently as ICANN's Chief Security Officer, but also as a vital support to the Board and its work at meetings.

Whereas, Steve has given notice to ICANN that he has accepted a new position with the Internet Society (ISOC), and that his employment with ICANN will conclude at the end of this meeting.

Whereas, Steve is of gentle nature, possessed of endless patience and fierce integrity, a love of music, and great dedication to the Internet and those who nurture it.

Whereas, the ICANN Board wishes to recognize Steve for his service to ICANN and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN meetings and his extraordinary efforts have been most appreciated.

Resolved (2008.06.26.18), the ICANN Board formally thanks Steve Conte for his service to ICANN, and expresses its good wishes to Steve for his work with ISOC and all his future endeavors.

| back to top |

Thanks to Sponsors

The Board extends its thanks to all sponsors of this meeting:

L'Association Française pour le Nommage Internet en Coopération (AFNIC), France Télécom, Groupe Jutheau Husson, Stichting Internet Domeinregistratie Nederland (SIDN), Association Marocaine des Professionnels des Telecommunications (MATI), Afilias Limited, Deutsches Network Information Center (DENIC), The European

Registry of Domain Names (EURid), European Domain Name Registration (EuroDNS), INDOM, Toit de la Grande Arche Parvis de la Défense, Musee de L'informatique, NeuStar, Inc., Public Interest Registry, VeriSign, Inc., AusRegistry, Fundació puntCAT, Council of European National Top Level Domain Registries (CENTR), China Internet Network Information Center (CNNIC), Institut National de Recherche en Informatique et en Automatique (INRIA), InterNetX, Key-Systems GmbH, Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, Nask, Nominet UK, The Internet Infrastructure Foundation (.SE), Registry ASP, Amen, DotAsia Organisation Ltd., Domaine FR, Golog, Iron Mountain Intellectual Property Management, Inc., Nameaction, Inc., NIC.AT Internet Verwaltungs und Betriebsgesellschaft m.b.H, UNINETT Norid A/S, IIT – CNR (Registro del ccTLD.it), Renater, Domaine.info, and ICANNWiki.

| back to top |

Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

The Board wishes to extend its thanks to the local host organizers, AGIFEM, its President Daniel Dardailler, Vice-President Pierre Bonis and CEO Sebastien Bachollet, as well as Board Members from Afnic, Amen, Domaine.fr, Eurodns, Indom, Internet Society France, Internet fr, Namebay, Renater, and W3C.

The Board would also like to thank Eric Besson, the Minister for Forward Planning, Assessment of Public Policies and Development of the Digital Economy for his participation in the Welcome Ceremony and the Welcome Cocktail.

The Board thanks the Au Toit de la Grande Arche , its president, Francis Bouvier, and Directeur, Philippe Nieuwbourg, and Bertrand Delanoë, Maire de Paris, and Jean-Louis Missika, adjoint au Maire de Paris for their hospitality at the social events at the ICANN Paris meeting.

The Board expresses its appreciation to the scribes Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting. ICANN would particularly like to acknowledge the many efforts of Michael Evans for his assistance in organizing the past eighteen public board meetings and many other smaller events for the ICANN community.

The Board also wishes to express its appreciation to VeriLan Events Services, Inc. for technical support, Auvitec and Prosn for audio/visual support, Calliope Interpreters France for interpretation, and France Telecom for bandwith. Additional thanks are given to the Le Meridien Montparnasse for this fine facility, and to the event facilities and support.

The Board also wishes to thank all those who worked to introduce a Business Access Agenda for the first time at this meeting, Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and ICANN Staff.

The members of the Board wish to especially thank their fellow Board Member Jean-Jacques Subrenat for his assistance in making the arrangements for this meeting in

Paris, France.

| back to top |

Ex. R-5

RESPONDENT'S EXHIBIT

gTLD Applicant Guidebook

Version 2012-06-04

4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at http://gnso.icann.org/issues/new-gtlds.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to http://www.icann.org/en/topics/new-gtld-program.htm.

gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see http://gnso.icann.org/issues/new-gtlds/.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012.** New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012.**

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

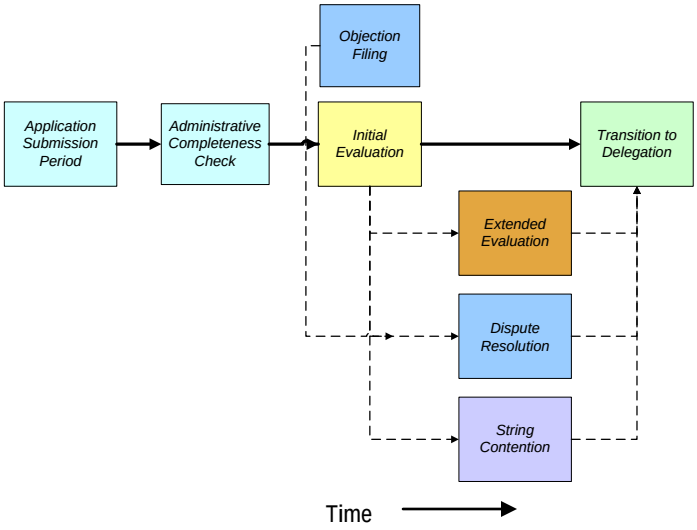


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as "application comments.") The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators' summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

Comments and the Formal Objection Process: A distinction should be made between application comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN's evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

String Contention: Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

Government Notifications: Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

General Comments: A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

1.1.2.4 GAC Early Warning

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.[1] The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

1.1.2.5 Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

[1] While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.

2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.[2]

1.1.2.6 Objection Filing

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

[2] See "Delegation Rate Scenarios for New gTLDs" at http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

1.1.2.7 Receipt of GAC Advice on New gTLDs

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

1.1.2.8 Extended Evaluation

Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

1.1.2.9 Dispute Resolution

Dispute resolution applies only to applicants whose applications are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

1.1.2.10 String Contention

String contention applies only when there is more than one qualified application for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C's application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

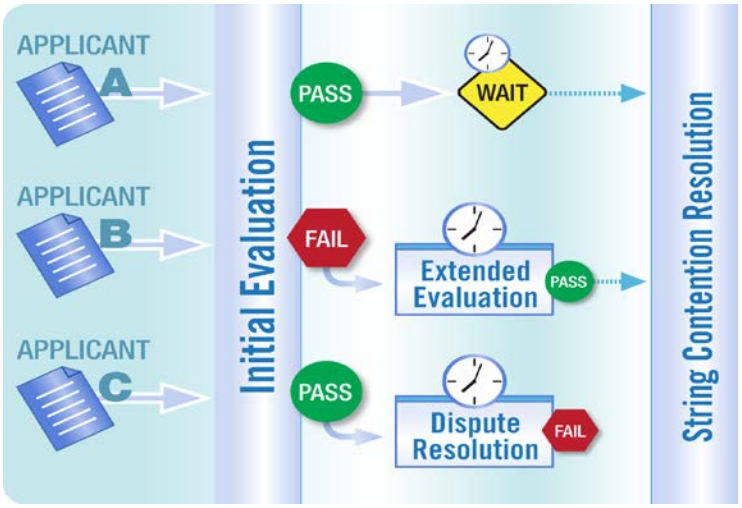


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

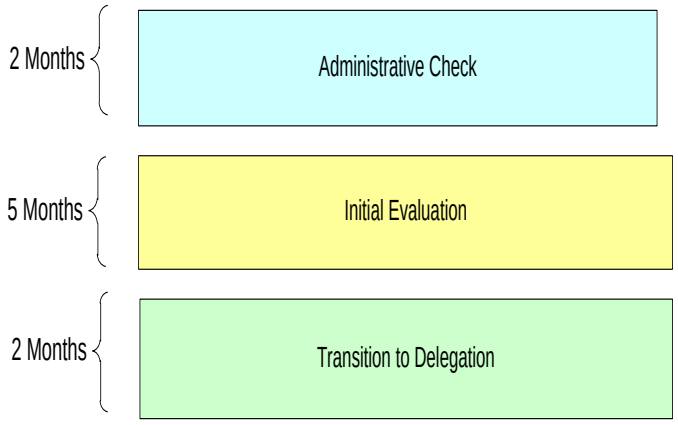


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

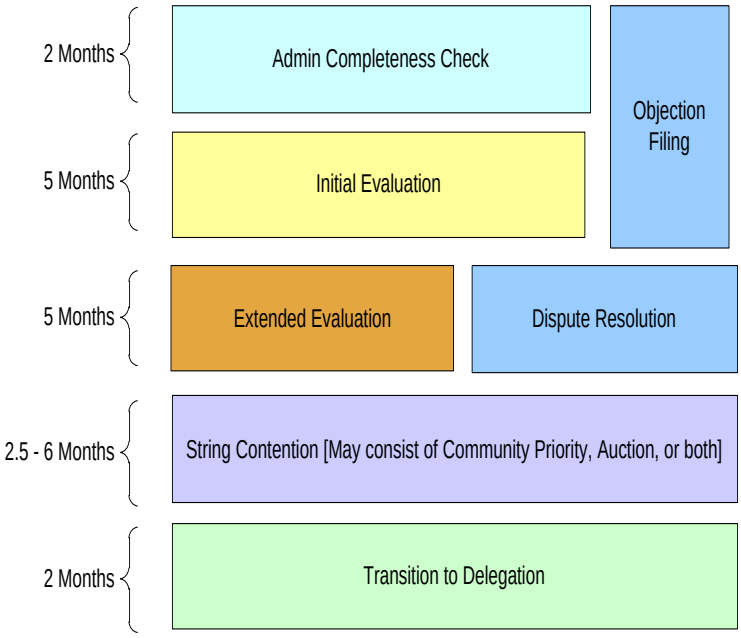


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

1.1.5 Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

Scenario 9 – Extended Evaluation, Objection, Fail Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

1.1.6 Subsequent Application Rounds

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

1.2 Information for All Applicants

1.2.1 Eligibility

Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the "crimes of trust" standard sometimes used in the banking and finance industry.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.

a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;

b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;

c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;

d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;

e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;

f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;

g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[3];

i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)[4,5];

j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) – (i) above);

k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) – (d) above, or ever for the crimes listed in (e) – (i) above);

l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;

m. has been involved in a pattern of adverse, final decisions indicating that the applicant

[3] http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html

[4] http://www.unodc.org/unodc/en/treaties/CTOC/index.html

[5] It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;

o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders[6] may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

Registrar Cross-Ownership -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

[6] http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

Legal Compliance -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

1.2.2 Required Documents

All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment –** Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements –** Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. ***Community endorsement –*** If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

   At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

   Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. ***Government support or non-objection*** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.

3. ***Documentation of third-party funding commitments –*** If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3 Community-Based Designation

All applicants are required to designate whether their application is **community-based**.

1.2.3.1 Definitions

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application.** A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

1.2.3.2 Implications of Application Designation

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

Objection / Dispute Resolution – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

String Contention – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.

- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.

- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

1.2.3.3 Changes to Application Designation

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review http://www.icann.org/en/topics/TLD-acceptance/ for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see http://idn.icann.org/).

1.2.5 Notice concerning TLD Delegations

ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

1.2.6 Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

1.2.7 Notice of Changes to Information

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

1.2.8 Voluntary Designation for High Security Zones

An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

1.2.9 Security and Stability

Root Zone Stability: There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012.** Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See http://newgtlds.icann.org/applicants/candidate-support for details on these resources.

1.2.11 Updates to the Applicant Guidebook

As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

1.3.1 IDN-Specific Requirements

An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at http://icann.org/en/topics/idn/rfcs.htm.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <**испытание**> and the A-label is <**xn--80akhbyknj4f>.** An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).[7]

   If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see http://www.icann.org/en/topics/idn/rfcs.htm), and by active participation in the IDN wiki (see http://idn.icann.org/) where some rendering problems are demonstrated.
6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

[7] See examples at http://stupid.domain.name/node/683

1.3.2 IDN Tables

An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at http://www.iana.org/procedures/idn-repository.html.

In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines[8] and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

[8] *See* http://www.icann.org/en/topics/idn/implementation-guidelines.htm

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at http://iana.org/domains/idn-tables/, and submission guidelines at http://iana.org/procedures/idn-repository.html.

1.3.3 IDN Variant TLDs

A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.[9] Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

[9] The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

   Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a "Declared Variants List" that will be available on ICANN's website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm.

   ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.

c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

1.4 Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1 Accessing the TLD Application System

The TAS site will be accessible from the New gTLD webpage (http://www.icann.org/en/topics/new-gtld-program.htm), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

including user rights, obligations, and restrictions in relation to the use of the system.

1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012.**

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

1.4.1.2 Application Form

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	Technical and Operational Questions (External)
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	Technical and Operational Questions (Internal)
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	Financial Questions
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

1.4.2 Customer Service during the Application Process

Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 gTLD Evaluation Fee

The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

Refunds -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

Thus, any applicant that has not been successful is eligible for at least a 20% refund of the evaluation fee if it withdraws its application.

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

Note on 2000 proof-of-concept round applicants --
Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof–of-concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees[10] include:

- ***Registry Services Review Fee –*** If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

[10] The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- ***Dispute Resolution Filing Fee –*** This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.

- ***Advance Payment of Costs –*** In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

  The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider's rules.

  ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- ***Community Priority Evaluation Fee –*** In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel's review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3 Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.[11]

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider's instructions.

1.5.4 Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6 Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

[11] Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

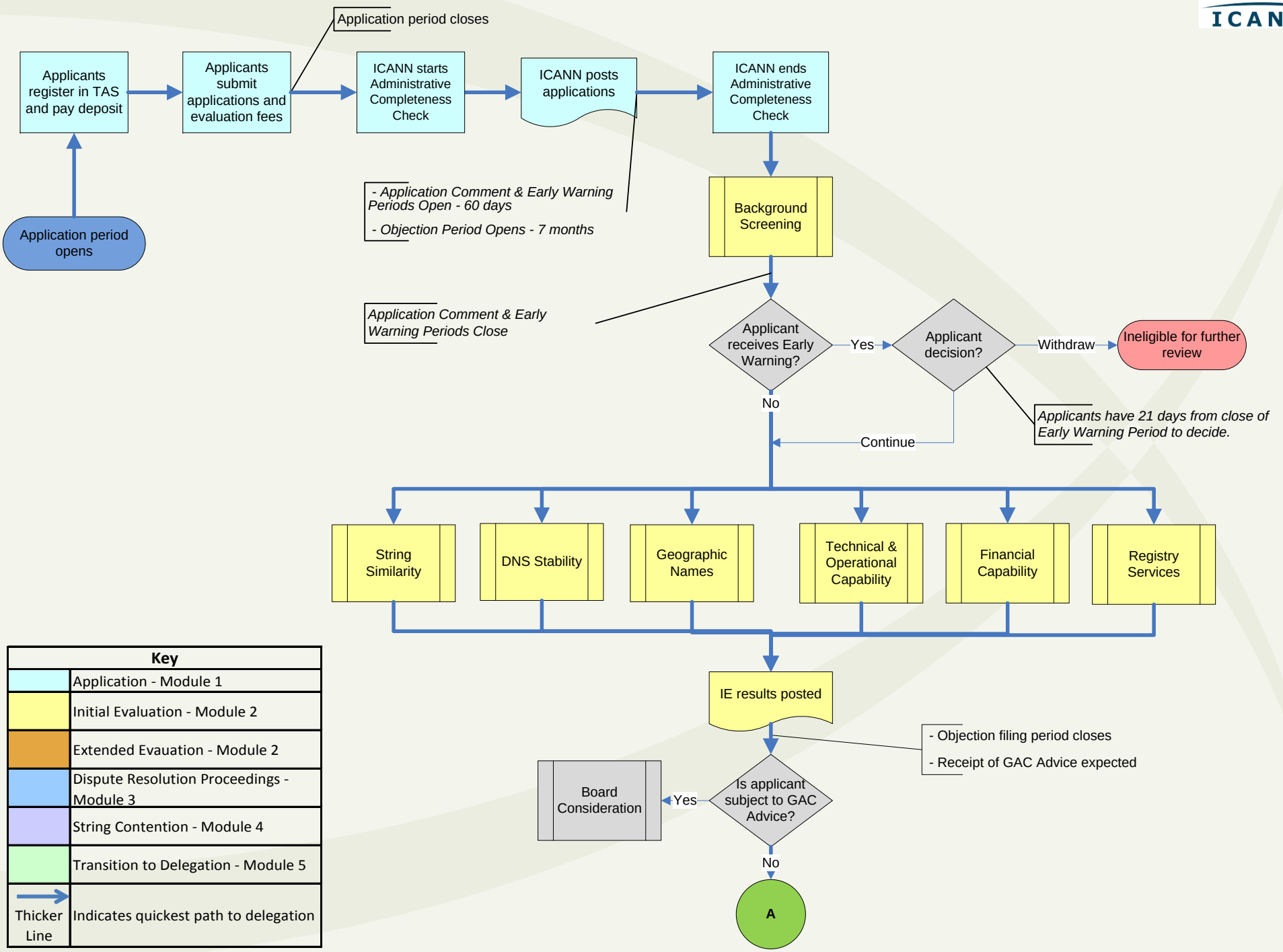
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

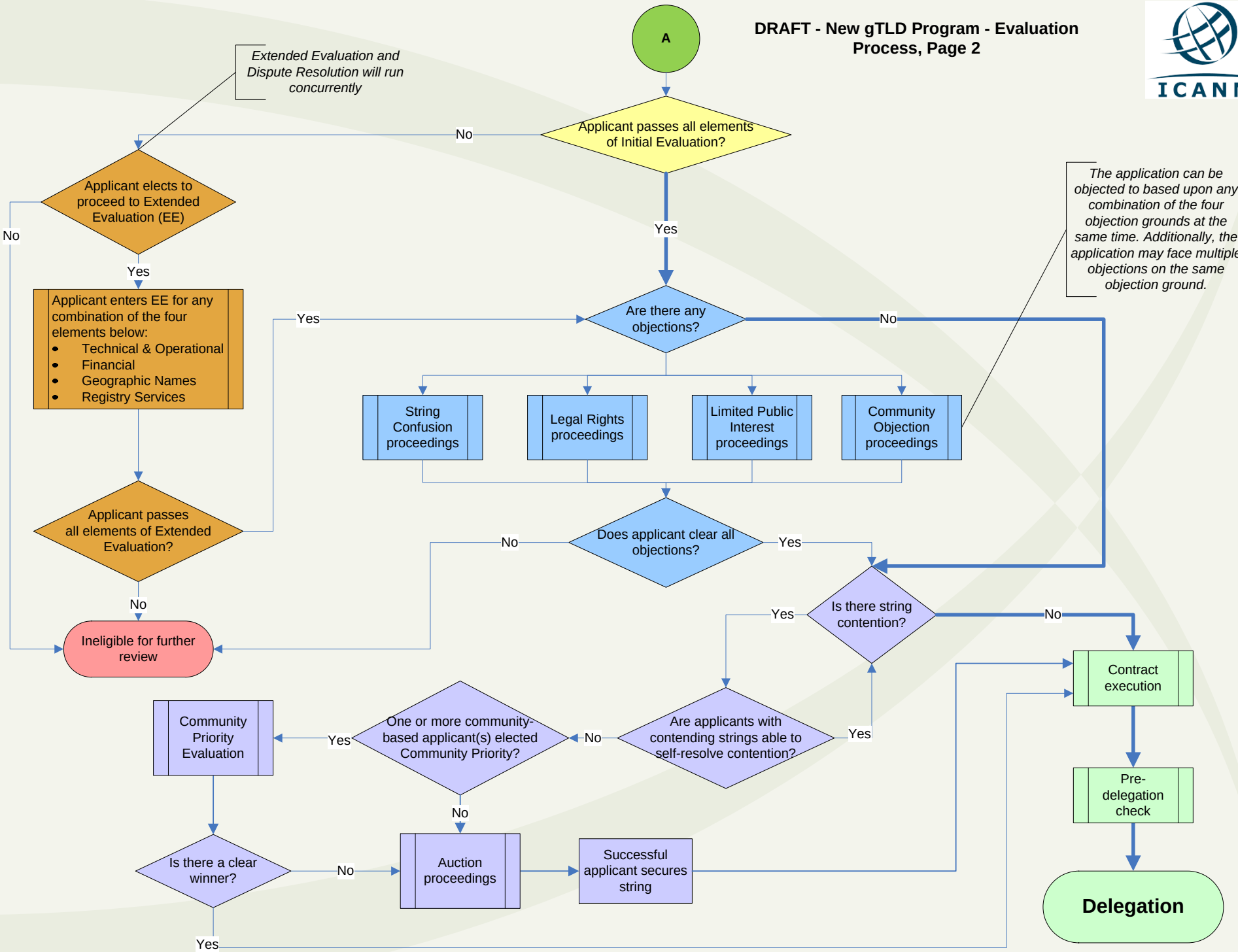
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

DRAFT - New gTLD Program - Evaluation Process



DRAFT - New gTLD Program - Evaluation Process, Page 2



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 2

4 June 2012

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews
  - String similarity
  - Reserved names
  - DNS stability
  - Geographic names
- Applicant Reviews
  - Demonstration of technical and operational capability
  - Demonstration of financial capability
  - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

2.1 Background Screening

Background screening will be conducted in two areas:

(a) General business diligence and criminal history; and

(b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

2.1.1 General business diligence and criminal history

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.[1]

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

[1] See http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.1.2 History of cybersquatting

ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.2 Initial Evaluation

The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 String Reviews

In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel's task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
    - Every other single character.
    - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

Similarity to Existing TLDs or Reserved Names – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as "foo" and "Foo" are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at http://iana.org/domains/root/db/.

IDN tables that have been submitted to ICANN are available at http://www.iana.org/domains/idn-tables/.

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN's website.

Similarity to TLD strings requested as IDN ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see http://www.icann.org/en/topics/idn/fast-track/). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term "validated" is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at http://www.icann.org/en/topics/idn.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

Review of 2-character IDN strings — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

a) Any one-character label (in any script), and

b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

2.2.1.1.2 *Review Methodology*

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.[2] Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.[3]

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

[2] *See* http://icann.sword-group.com/algorithm/

[3] In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

2.2.1.2 Reserved Names and Other Unavailable Strings

Certain names are not available as gTLD strings, as detailed in this section.

2.2.1.2.1 Reserved Names

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

AFRINIC	*IANA-SERVERS*	*NRO*
ALAC	*ICANN*	*RFC-EDITOR*
APNIC	*IESG*	*RIPE*
ARIN	*IETF*	*ROOT-SERVERS*
ASO	*INTERNIC*	*RSSAC*
CCNSO	*INVALID*	*SSAC*
*EXAMPLE**	*IRTF*	*TEST**
GAC	*ISTF*	*TLD*

GNSO	*LACNIC*	*WHOIS*
GTLD-SERVERS	*LOCAL*	*WWW*
IAB	*LOCALHOST*	
IANA	*NIC*	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

2.2.1.2.2 Declared Variants

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

2.2.1.2.3 Strings Ineligible for Delegation

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أوليمبي	أوليمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림피아드	Олимпийский
Олимпиада		

International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	الصليب ألأحمر	الهلال ألأحمر
البلورة الحمراء	الكريستالة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at http://www.icann.org/en/committees/security/sac045.pdf. Some publicly available statistics are also available at http://stats.l.root-servers.org/.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 String Requirements

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:

1.1.1 The label must have no more than 63 characters.

1.1.2 Upper and lower case characters are treated as identical.

1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names (RFC 3696), Internationalized Domain Names in Applications (IDNA)(RFCs 5890-5894), and any updates thereto.* This includes the following:

1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names – These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:

2.1.1 Must be a valid A-label according to IDNA.

2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).[4]

2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Ll, Lo, Lm, Mn, Mc).

2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms.* See also examples in http://unicode.org/faq/normalization.html.

2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.

2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See http://www.icann.org/en/topics/idn/implementatio

[4] It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

n-guidelines.htm. This includes the following, non-exhaustive, list of limitations:

2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See http://www.unicode.org/reports/tr24/).

2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.

3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.[5] Note, however, that a two-character IDN string will not be approved if:

3.2.1 It is visually similar to any one-character label (in any script); or

3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

[5] Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at http://gnso.icann.org/drafts/jig-final-report-30mar11-en.pdf. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names[6]

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

i. it is an alpha-3 code listed in the ISO 3166-1 standard.

ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.

iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.

iv. it is the short- or long-form name association with a code that has been designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency.

v. it is a separable component of a country name designated on the "Separable Country Names List," or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.

vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

[6] Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like "the." A transposition is considered a change in the sequence of the long or short–form name, for example, "RepublicCzech" or "IslandsCayman."

vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 Geographic Names Requiring Government Support

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the *capital city name* of any country or territory listed in the ISO 3166-1 standard.

2. An application for a *city name*, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

   City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

   An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

   (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

(b) The applied-for string is a city name as listed on official city documents.[7]

3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.

4. An application for a string listed as a UNESCO region[8] or appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.[9]

   In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

   Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant's interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

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[7] City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

[8] *See* http://www.unesco.org/new/en/unesco/worldwide/.

[9] *See* http://unstats.un.org/unsd/methods/m49/m49regin.htm.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.[10]

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

[10] *See* https://gacweb.icann.org/display/gacweb/GAC+Members

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;

2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and

3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at http://www.icann.org/en/registries/rsep/. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See http://www.icann.org/en/registries/agreements.htm.

A full definition of registry services can be found at http://www.icann.org/en/registries/rsep/rsep.html.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD's DNS servers.

- NS records and in-bailiwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

2.2.3.4 *Methodology*

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see http://www.icann.org/en/registries/rsep/rstep.html). This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

2.2.4 *Applicant's Withdrawal of an Application*

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

2.3 Extended Evaluation

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

2.3.1 Geographic Names Extended Evaluation

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 *Technical/Operational or Financial Extended Evaluation*

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.[11] In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program ("Program") Code of Conduct ("Code") is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist ("Panelist").

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

[11] http://newgtlds.icann.org/about/evaluation-panels-selection-process

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
    - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
    - Promoter, underwriter, or voting trustee of the Applicant; or
    - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

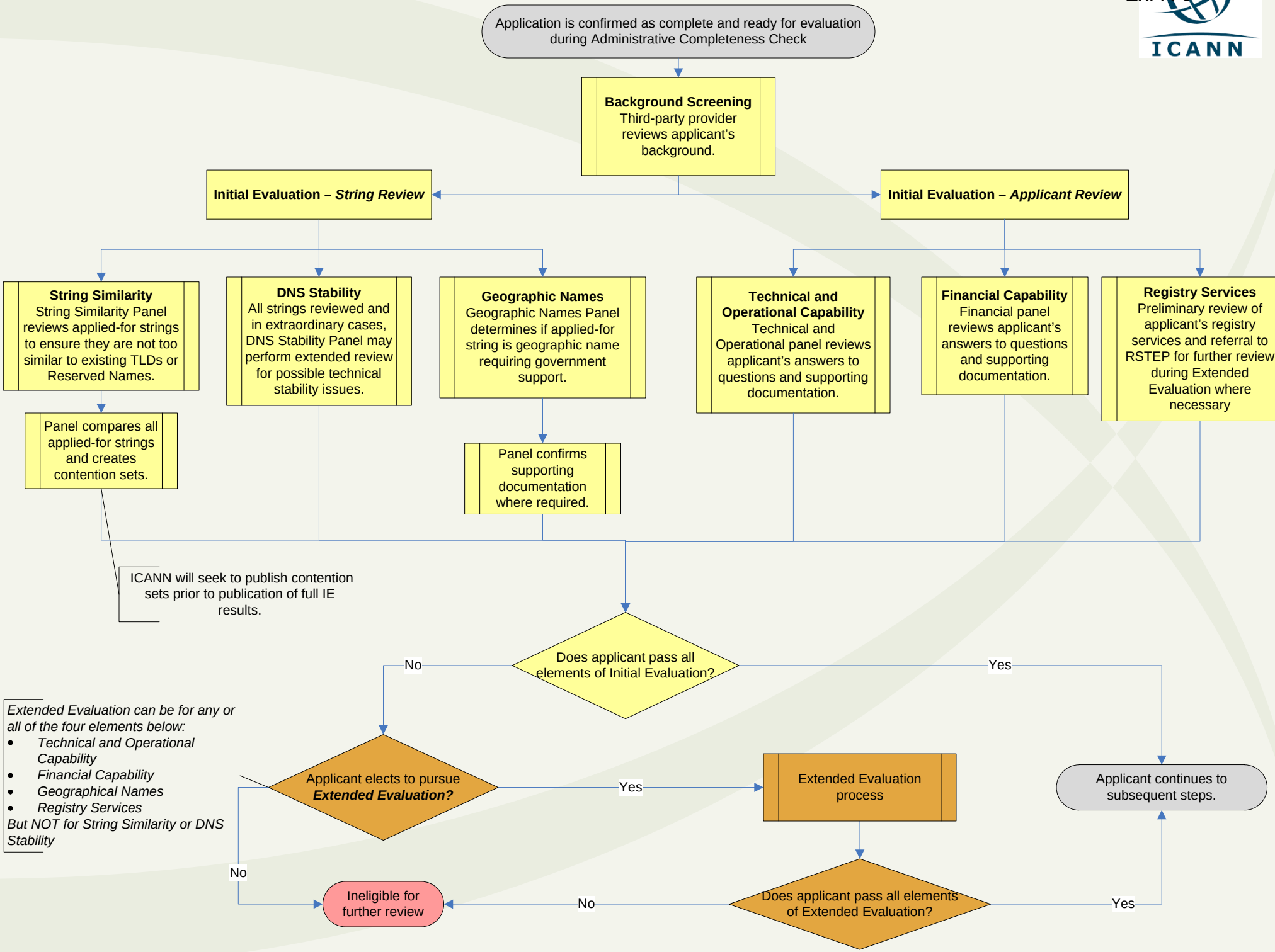
Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation

Ex. R-5



Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an "English short name" field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidade Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Río Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da India
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

Eligibility

Each record in this registry is derived from the following possible properties:

Class A: The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."

Class B: The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."

** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf.

Class C: The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.

- The criteria and evaluation should be as objective as possible.

    - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.

    - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
  - Providing for funds to continue operations in the event of a registry failure.
  - Adherence to data escrow, registry failover, and continuity planning requirements.

- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.

- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.

- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:

  - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
  - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
  - Adhere to DNS stability and security requirements as described in the technical section, and
  - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?

- Demonstration of the ability to operate and fund the registry on an ongoing basis:

  - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
  - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
  - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.

- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
  - Funding adequately covers technical requirements,
  - Funding covers costs,
  - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.

- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.

- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.

- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.

- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.

- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:

  - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
  - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

  This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).

- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.

- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:

  - Scoring a 3 on the continuity criteria, or
  - Scoring a 2 on any two financial criteria.

- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application. Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected. The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes; vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force; vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities; viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols); x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) – (ix) above); xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) – (iv) above, or ever for the crimes listed in (v) – (ix) above); xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application. If any of the above events have occurred, please provide details.					

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		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment. The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation. Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+006F.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. Submission of IDN tables in a standards-based format is encouraged.	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored. An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	Answers should address the following points: i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				protecting the privacy or confidential information of registrants or users? If so, please describe any such measures. Describe whether and in what ways outreach and communications will help to achieve your projected benefits.			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	Answers should address the following points: i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.			

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				The applicant's designation as standard or community-based cannot be changed once the application is submitted.			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	Descriptions should include: • How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language. • How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. • When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. • The current estimated size of the community, both as to membership and geographic extent.		Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful. Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	Explanations should clearly state: • Relations to any community organizations. • Relations to the community and its constituent parts/groups. • Accountability mechanisms of the applicant to the community.			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	Descriptions should include: • Intended registrants in the TLD. • Intended end-users of the TLD. • Related activities the applicant has carried out or intends to carry out in service of this purpose. • Explanation of how the purpose is of a lasting nature.			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	Explanations should clearly state: • relationship to the established name, if any, of the community.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				• relationship to the identification of community members. • any connotations the string may have beyond the community.			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	Descriptions should include proposed policies, if any, on the following: • Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. • Name selection: what types of second-level names may be registered in the gTLD. • Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. • Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants.			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement. Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community. Endorsements presented as supporting documentation for this question should be submitted in the original language.			

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Geographic Names	21	(a) Is the application for a geographic name?	Y	An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria. An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	See the documentation requirements in Module 2 of the Applicant Guidebook. Documentation presented in response to this question should be submitted in the original language.			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at https://gacweb.icann.org/display/GACADV/New+gTLDs. For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See the Dot Info Circular at https://gacweb.icann.org/display/GACADV/New+gTLDs . Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level			

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				must be separately approved according to Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns. The following registry services are customary services offered by a registry operator: A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD. Additional proposed registry services that are unique to the registry must also be described.	Y	Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html. Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards. Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and		Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.	

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				authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	Shared Registration System (SRS) Performance: describe • the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer should include, but is not limited to: • A high-level SRS system description; • Representative network diagram(s); • Number of servers; • Description of interconnectivity with other registry systems; • Frequency of synchronization between servers; and • Synchronization scheme (e.g., hot standby, cold standby).	Y	The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements. Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below. Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.	0-1	Complete answer demonstrates: (1) a plan for operating a robust and reliable SRS, one of the five critical registry functions; (2) scalability and performance consistent with the overall business approach, and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.	1 - meets requirements: Response includes (1) An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of a well-developed plan to operate a robust and reliable SRS; (3) SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement; (4) SRS is consistent with the technical, operational and financial approach described in the application; and (5) Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.

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		A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734. If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used. Describe resourcing plans (number and description of personnel roles allocated to this area). A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.	Y		0-1	Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (4) ability to comply with relevant RFCs; (5) if applicable, a well-documented implementation of any proprietary EPP extensions; and (6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.	1 - meets requirements: Response includes (1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services; (3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates that technical resources are already on hand, or committed or readily available. 0 - fails requirements: Does not meet all the requirements to score 1.
	26	Whois: describe • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer should include, but is not limited to:	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions); (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the	2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes: (1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the

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		• A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. To be eligible for a score of 2, answers must also include: • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. A complete answer is expected to be no more than 5 pages.				planned costs detailed in the financial section; (4) ability to comply with relevant RFCs; (5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and (6) if applicable, a well-documented implementation of Searchable Whois.	application demonstrates compliance with any applicable privacy laws or policies. 1 - meets requirements: Response includes (1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface; (3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and (4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	27	Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must: • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and	Y		0-1	Complete answer demonstrates: (1) complete knowledge and understanding of registration lifecycles and states; (2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and (3) the ability to comply with relevant RFCs.	1 - meets requirements: Response includes (1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points; (3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and (4) Demonstrates an adequate level of

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		description of personnel roles allocated to this area). The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state. If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs. A complete answer is expected to be no more than 5 pages.					resources that are already on hand or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	28	Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to: • An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; • Policies for handling complaints regarding abuse; • Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as	Y	Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.	0-2	Complete answer demonstrates: (1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; (2) Plans are adequately resourced in the planned costs detailed in the financial section; (3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.	2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes: (1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and (2) Measures from at least one additional area to be eligible for 2 points as described in the question. 1 - meets requirements Response includes: (1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to

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		described below. • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: o Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. o Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and o If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by					carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: o Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; o Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and o Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. A complete answer is expected to be no more than 20 pages.					
	29	Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup. A complete answer should include: • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the	Y		0-2	Complete answer describes mechanisms designed to: (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis.	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes: (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). 1 - meets requirements: Response includes (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants. A complete answer is expected to be no more than 10 pages.					(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score a 1.
	30	(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to: • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. To be eligible for a score of 2, answers must also include: • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).	Y	Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.	0-2	Complete answer demonstrates: (1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them; (2) security capabilities are consistent with the overall business approach and planned size of the registry; (3) a technical plan adequately resourced in the planned costs detailed in the financial section; (4) security measures are consistent with any commitments made to registrants regarding security levels; and (5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes: (1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and (2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.) 1 - meets requirements: Response includes:

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. 0 - fails requirements: Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to: • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response	N	Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		policies, plans, and processes; • plans to minimize the risk of unauthorized access to its systems or tampering with registry data; • intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; • details for auditing capability on all network access; • physical security approach; • identification of department or group responsible for the registry's security organization; • background checks conducted on security personnel; • description of the main security threats to the registry operation that have been identified; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).					
	31	Technical Overview of Proposed Registry: provide a technical overview of the proposed registry. The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements. The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation. In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	Complete answer demonstrates: (1) complete knowledge and understanding of technical aspects of registry requirements; (2) an adequate level of resiliency for the registry's technical operations; (3) consistency with planned or currently deployed technical/operational solutions; (4) consistency with the overall business approach and planned size of the registry; (5) adequate resourcing for technical plan in the	1 - meets requirements: Response includes: (1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Technical plans consistent with the technical, operational, and financial approach as described in the application; (3) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area. This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform. A complete answer is expected to be no more than 10 pages.				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to: • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial	N		0-2	Complete answer demonstrates: (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section.	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. 1 - meets requirements: Response includes (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume. A complete answer is expected to be no more than 10 pages.					registry; (4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and (5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	33	Database Capabilities: provide details of database capabilities including but not limited to: • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A registry database data model can be included to provide additional clarity to this response. Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services. To be eligible for a score of 2, answers must also	N		0-2	Complete answer demonstrates: (1) complete knowledge and understanding of database capabilities to meet the registry technical requirements; (2) database capabilities consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes (1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and (2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices. 1 - meets requirements: Response includes (1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for database capabilities

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		include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume. A complete answer is expected to be no more than 5 pages.					describe all necessary elements; (3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance; (4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and (5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	34	Geographic Diversity: provide a description of plans for geographic diversity of: a. name servers, and b. operations centers. Answers should include, but are not limited to: • the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; • any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.	N		0-2	Complete answer demonstrates: (1) geographic diversity of nameservers and operations centers; (2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes (1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and (2) A high level of availability, security, and bandwidth. 1 - meets requirements: Response includes (1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence; (3) Geo-diversity plans are consistent

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		A complete answer is expected to be no more than 5 pages.					with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	35	DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs. All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472. • Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. • RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. • The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). • Demonstrate how the system will	N	Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement. Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.	0-1	Complete answer demonstrates: (1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (4) evidence of compliance with Specification 6 to the Registry Agreement; and (5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.	1 - meets requirements: Response includes: (1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix; (3) Plans are consistent with technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement. Examples of evidence include: • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. A complete answer is expected to be no more than 10 pages.					
	36	IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to: • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer is expected to be no more than 5 pages.	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html.	0-1	Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement.	1 - meets requirements: Response includes (1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10; (3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	Data Backup Policies & Procedures: provide • details of frequency and procedures for backup of data, • hardware, and systems used for backup, • data format, • data backup features, • backup testing procedures, • procedures for retrieval of data/rebuild of database, • storage controls and procedures, and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer is expected to be no more than 5 pages.	N		0-1	Complete answer demonstrates: (1) detailed backup and retrieval processes deployed; (2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.	1 - meets requirements: Response includes (1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element; (2) A description of leading practices being or to be followed; (3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score a 1.
	38	Data Escrow: describe • how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer is expected to be no more than 5 pages	N		0-1	Complete answer demonstrates: (1) complete knowledge and understanding of data escrow, one of the five critical registry functions; (2) compliance with Specification 2 of the Registry Agreement; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.	1 – meets requirements: Response includes (1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement); (3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. 0 – fails requirements: Does not meet all the requirements to score a 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). The response should include, but is not limited to, the following elements of the business continuity plan: • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. To be eligible for a score of 2, answers must also include: • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. A complete answer is expected to be no more than 15 pages.	N	For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf. A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line.If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster. A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly. Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.	0-2	Complete answer demonstrates: (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement.	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes: (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. 1 - meets requirements: Response includes: (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score a 1.
	40	Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event	N		0-1	Complete answer demonstrates: (1) complete knowledge and	1 - meets requirements: Response includes (1) Adequate description of a registry

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question. Elements of the plan may include, but are not limited to: • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. A complete answer is expected to be no more than 10 pages.				understanding of the Registry Transition Processes; and (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.	transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and (3) Transition plan is consistent with the technical, operational, and financial approach as described in the application. 0 - fails requirements: Does not meet all the requirements to score a 1.
	41	Failover Testing: provide • a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). The failover testing plan should include, but is not limited to, the following elements: • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done	N		0-1	Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.	1 - meets requirements: Response includes (1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results; (3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. 0 – fails requirements Does not meet all the requirements to score a 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		with the results, and with whom results are shared; • How test plans are updated (e.g., what triggers an update, change management processes for making updates); • Length of time to restore critical registry functions; • Length of time to restore all operations, inclusive of critical registry functions; and • Length of time to migrate from one site to another. A complete answer is expected to be no more than10 pages.					
	42	Monitoring and Fault Escalation Processes: provide • a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). To be eligible for a score of 2, answers must also include: • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. A complete answer is expected to be no more than 10 pages.	N		0-2	Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) consistency with the commitments made to registrants and registrars regarding system maintenance.	2 - exceeds requirements: Response meets all attributes for a score of 1 and includes (1) Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; (2) A high level of availability that allows for the ability to respond to faults through a 24x7 response team. 1 - meets requirements: Response includes (1) Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; (3) Plans are consistent with the technical, operational, and financial approach described in the application; and (4) Demonstrates an adequate level of resources that are on hand,

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	DNSSEC: Provide • The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; • Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application	N		0-1	Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) an ability to comply with relevant RFCs.	1 - meets requirements: Response includes (1) An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; (3) An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); (4) Technical plan is consistent with the technical, operational, and financial approach as described in the application; and (5) Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.

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	44	OPTIONAL. IDNs: • State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. • Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. • Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). A complete answer is expected to be no more than 10 pages plus attachments.	N	IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here. IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.	0-1	IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.	1 - meets requirements for this optional element: Response includes (1) Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations; (3) Evidence of ability to resolve rendering and known IDN issues or spoofing attacks; (4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and (5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score a 1.
Demonstration of Financial Capability	45	Financial Statements: provide • audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and • audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. For newly-formed applicants, or where financial statements are not audited, provide: • the latest available unaudited financial statements; and • an explanation as to why audited or independently certified financial statements are not available. At a minimum, the financial statements should be provided for the legal entity listed as the applicant.	N	The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry. Supporting documentation for this question should be submitted in the original language.	0-1	Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history	1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements. 0 - fails requirements: Does not meet all the requirements to score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Financial statements are used in the analysis of projections and costs. A complete answer should include: • balance sheet; • income statement; • statement of shareholders equity/partner capital; • cash flow statement, and • letter of auditor or independent certification, if applicable.				(less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.	
	46	Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached). Note, if certain services are outsourced, reflect this in the relevant cost section of the template. The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process. A complete answer is expected to be no more than 10 pages in addition to the template.	N		0-1	Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation). Applicant's description of projections development is sufficient to show due diligence.	1 - meets requirements: (1) Financial projections adequately describe the cost, funding and risks for the application (2) Demonstrates resources and plan for sustainable operations; and (3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported. 0 - fails requirements: Does not meet all of the requirements to score a 1.
	47	Costs and capital expenditures: in conjunction with the financial projections template, describe and explain: • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an	N	This question is based on the template submitted in question 46.	0-2	Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.	2 - exceeds requirements: Response meets all of the attributes for a score of 1 and: (1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant; (2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and (3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made. As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs. To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples. A complete answer is expected to be no more than 10 pages.				Key assumptions and their rationale are clearly described and may include, but are not limited to: • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/ equipment units, marketing, and other costs; and • Costs of outsourcing, if any.	1 - meets requirements: (1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant); (2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and (3) Projections are reasonably aligned with the historical financial statements provided in Question 45. 0 - fails requirements: Does not meet all the requirements to score a 1.
		(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges. A complete answer is expected to be no more than 10 pages.	N				
	48	(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry). Describe: I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations; II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's	N	Supporting documentation for this question should be submitted in the original language.	0-2	Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described.	2 - exceeds requirements: Response meets all the attributes for a score of 1 and (1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ; (2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and

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		operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner); III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding; IV) Any significant variances between years in any category of funding and revenue; and V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate: I) A conservative estimate of funding and revenue; and II) Ongoing operations that are not dependent on projected revenue. A complete answer is expected to be no more than 10 pages.				Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to: • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. Funding commitments may be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets. Key assumptions and their rationale are clearly described and address, at a minimum: • Key components of the funding plan and their key terms; and • Price and number of registrations.	earmarked for this purpose only in an amount adequate for three years operation; (3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and (4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity. 1 - meets requirements: (1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates; (2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant; (3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation; (4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and (5) Projections are reasonably aligned with the historical financial statements provided in Question 45. 0 - fails requirements: Does not meet all the requirements to score a 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges. A complete answer is expected to be no more than 10 pages.	N				
	49	(a) Contingency Planning: describe your contingency planning: • Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; • Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and • Describe the measures to mitigate the key risks as described in this question. A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario). To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. A complete answer is expected to be no more than10 pages.	N		0-2	Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.	2 - exceeds requirements: Response meets all attributes for a score of 1 and: (1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. 1 - meets requirements: (1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); (2) Response gives consideration to probability and resource impact of contingencies identified; and (3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified. 0 - fails requirements: Does not meet all the requirements to score a 1.
		(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe: • how on-going technical requirements will be met; and • what alternative funding can be reasonably raised at a later time. Provide an explanation if you do not believe there is any chance of reduced funding.	N				

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		Complete a financial projections template (Template 2, Worst Case Scenario) A complete answer is expected to be no more than 10 pages, in addition to the template.					
		(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met? A complete answer is expected to be no more than 10 pages.	N				
	50	(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application. The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are: (1) DNS resolution for registered domain names Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics. (2) Operation of the Shared Registration System Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with	N	Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants. The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application. The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not	0-3	Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.	3 - exceeds requirements: Response meets all the attributes for a score of 1 and: (1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure. 1 - meets requirements: (1) Costs are commensurate with technical, operational, and financial approach as described in the application; and (2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure. 0 - fails requirements: Does not meet all the requirements to score a 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		increasing levels of such queries, and the ability to meet SLA performance metrics. (3) Provision of Whois service Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services. (4) Registry data escrow deposits Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database). (5) Maintenance of a properly signed zone in accordance with DNSSEC requirements. Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics. List the estimated annual cost for each of these functions (specify currency used). A complete answer is expected to be no more than 10 pages.		to the applicant's actual in-house or subcontracting costs for provision of these functions. Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.			
		(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a	N	Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill			

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		minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement: (i) Irrevocable standby letter of credit (LOC) issued by a reputable financial institution. • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument. • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: o Issuing bank and date of issue. o Beneficiary: ICANN / 4676 Admiralty		this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement. Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency. If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary. If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN. Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in			

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		Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee. o Applicant's complete name and address. o LOC identifying number. o Exact amount in USD. o Expiry date. o Address, procedure, and required forms whereby presentation for payment is to be made. o Conditions: ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. (ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution. • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term		its sole discretion, whether to execute and become a party to a financial instrument. The financial instrument should be submitted in the original language.			

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		of five years from the delegation of the TLD. • The funds in the deposit escrow account are not considered to be an asset of ICANN. • Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. • The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. • The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. • Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line *D*, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line *D as that is covered in Section VI*.

Line E. Add lines *C* and *D* to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L* (*Other Costs*) and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F)*.

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe "other" capital expenditures in the *Comments/Notes* box.

Line F. Add lines *A* through *E* to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines *A*, *B*, *C* to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines *E* through *G* to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines *I* through *K* to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines *A* through *F* to arrive at the projected net cash flow for line *H*.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines *A* and *B* to arrive at the total sources of funds for line *C*.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : **Sample**

In local currency (unless noted otherwise)

Sec.	Reference / Formula	Start-up Costs	Live / Operational Year 1	Year 2	Year 3	Comments / Notes
						Provide name of local currency used.
I) Projected Cash Inflows and Outflows						
A) Forecasted registration volume		-	62,000	81,600	105,180	Registration was forecasted based on recent market surveys which we have attached and disccused below.
B) Registration fee		$ -	$ 5.00	$ 5.50	$ 6.05	We do not anticipate significant increases in Registration Fees subsequent to year 3.
C) Registration cash inflows	**A * B**	-	310,000	448,800	636,339	
D) Other cash inflows		-	35,000	48,000	62,000	Other cash inflows represent advertising monies expected from display ads on our website.
E) Total Cash Inflows		-	345,000	496,800	698,339	
Projected Operating Cash Outflows						
F) Labor:						
i) Marketing Labor		25,000	66,000	72,000	81,000	Costs are further detailed and explained in response to question 47.
ii) Customer Support Labor		5,000	68,000	71,000	74,000	
iii) Technical Labor		32,000	45,000	47,000	49,000	
G) Marketing		40,000	44,000	26,400	31,680	
H) Facilities		7,000	10,000	12,000	14,400	
I) General & Administrative		14,000	112,000	122,500	136,000	
J) Interest and Taxes		27,500	29,000	29,800	30,760	
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						Provide a list and associated cost for each outsourced function.
i) Hot site maintenance		5,000	7,500	7,500	7,500	Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support
ii) Partial Registry Functions		32,000	37,500	41,000	43,000	Outsourced certain registry and other functions to ABC registry (*applicant should list outsourced functions*). Costs for each year are based on expected domains under management
iii) {list type of activities being outsourced}		-	-	-	-	
iv) {list type of activities being outsourced}		-	-	-	-	
v) {list type of activities being outsourced}		-	-	-	-	
vi) {list type of activities being outsourced}		-	-	-	-	
L) Other Operating Costs		12,200	18,000	21,600	25,920	
M) Total Operating Cash Outflows		199,700	437,000	450,800	493,260	
N) Projected Net Operating Cash flow	**E - M**	(199,700)	(92,000)	46,000	205,079	
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A) Total Variable Operating Costs		92,000	195,250	198,930	217,416	Variable Costs: -Start Up equals all labor plus 75% of marketing. -Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other Operating Costs
B) Total Fixed Operating Costs		107,700	241,750	251,870	275,844	Fixed Costs: equals Total Costs less Variable Costs
C) Total Operating Cash Outflows	**= Sec. I) M**	199,700	437,000	450,800	493,260	
	CHECK	-	-	-	-	Check that II) C equals I) N.
IIb) Break out of Critical Registry Function Operating Cash Outflows						Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50
A) Operation of SRS			5,000	5,500	6,050	Commensurate with Question 24
B) Provision of Whois			6,000	6,600	7,260	Commensurate with Question 26
C) DNS Resolution for Registered Domain Names			7,000	7,700	8,470	Commensurate with Question 35
D) Registry Data Escrow			8,000	8,800	9,680	Commensurate with Question 38
E) Maintenance of Zone in accordance with DNSSEC			9,000	9,900	10,890	Commensurate with Question 43
F) Other						
G) Total Critical Function Cash Outflows		-	35,000	38,500	42,350	
III) Projected Capital Expenditures						
A) Hardware		98,000	21,000	16,000	58,000	-Hardware & Software have a useful life of 3 years
B) Software		32,000	18,000	24,000	11,000	
C) Furniture & Other Equipment		43,000	22,000	14,000	16,000	-Furniture & other equipment have a useful life of 5 years
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
i)		-	-	-	-	List and describe each identifiable type of outsourcing.
ii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iii)		-	-	-	-	List and describe each identifiable type of outsourcing.
iv)		-	-	-	-	List and describe each identifiable type of outsourcing.
v)		-	-	-	-	List and describe each identifiable type of outsourcing.
vi)		-	-	-	-	List and describe each identifiable type of outsourcing.
E) Other Capital Expenditures						
F) Total Capital Expenditures		173,000	61,000	54,000	85,000	
IV) Projected Assets & Liabilities						
A) Cash		668,300	474,300	413,300	471,679	
B) Accounts receivable			70,000	106,000	160,000	
C) Other current assets			40,000	60,000	80,000	
D) Total Current Assets		668,300	584,300	579,300	711,679	
E) Accounts payable		41,000	110,000	113,000	125,300	
F) Short-term Debt						
G) Other Current Liabilities						
H) Total Current Liabilities		41,000	110,000	113,000	125,300	
I) Total Property, Plant & Equipment (PP&E)	**= Sec III) F: cumulative Prior Years + Cur Yr**	173,000	234,000	288,000	373,000	
J) 3-year Reserve		186,000	186,000	186,000	186,000	Should equal amount calculated for Question 50
K) Other Long-term Assets						
L) Total Long-term Assets		359,000	420,000	474,000	559,000	
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000	Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec I) J.
V) Projected Cash flow (excl. 3-year Reserve)						
A) Net operating cash flows	**= Sec. I) N**	(199,700)	(92,000)	46,000	205,079	
B) Capital expenditures	**= Sec. III) FE**	(173,000)	(61,000)	(54,000)	(85,000)	
C) Change in Non Cash Current Assets	**= Sec. IV) (B+C): Prior Yr - Cur Yr**	n/a	(110,000)	(56,000)	(74,000)	
D) Change in Total Current Liabilities	**= Sec. IV) H: Cur Yr - Prior Yr**	41,000	69,000	3,000	12,300	The $41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year
E) Debt Adjustments	**= Sec IV) F and M: Cur Yr - Prior Yr**	n/a	-	-	-	
F) Other Adjustments						
G) Projected Net Cash flow		**(331,700)**	**(194,000)**	**(61,000)**	**58,379**	
VI) Sources of funds						
A) Debt:						
i) On-hand at time of application		1,000,000				See below for comments on funding. Revenues are further detailed and explained in response to question 48.
ii) Contingent and/or committed but not yet on-hand						
B) Equity:						
i) On-hand at time of application						
ii) Contingent and/or committed but not yet on-hand		-				
C) Total Sources of funds		1,000,000				

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of $1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark regsitry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the regsitration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods.
Start-up: Our start-up phase is anticpated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilites and our negotiated funding and action plans as shown, are adequate to fund our our Worst Case Scenerio

Template 1 - Financial Projections: **Most Likely**

In local currency (unless noted otherwise)

Sec.		Reference / Formula	Start-up Costs	Live / Operational Year 1	Year 2	Year 3	Comments / Notes
							Provide name of local currency used.
I) Projected Cash inflows and outflows							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows			-	-	-	
	D) Other cash inflows						
	E) Total Cash Inflows		-	-	-	-	
Projected Operating Cash Outflows							
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) {list type of activities being outsourced}						
	ii) {list type of activities being outsourced}						
	iii) {list type of activities being outsourced}						
	iv) {list type of activities being outsourced}						
	v) {list type of activities being outsourced}						
	vi) {list type of activities being outsourced}						
	L) Other Operating costs						
	M) Total Operating Cash Outflows		-	-	-	-	
	N) Projected Net Operating Cash flow		-	-	-	-	
IIa) Break out of Fixed and Variable Operating Cash Outflows							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows		-	-	-	-	
		CHECK	-	-	-	-	
IIb) Break out of Critical Function Operating Cash Outflows							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows		-	-	-	-	
	H) 3-year Total		-				
III) Projected Capital Expenditures							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures		-	-	-	-	
IV) Projected Assets & Liabilities							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets		-	-	-	-	
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities		-	-	-	-	
	I) Total Property, Plant & Equipment (PP&E)		-	-	-	-	
	J) 3-year Reserve			-	-	-	
	K) Other Long-term Assets						
	L) Total Long-term Assets		-	-	-	-	
	M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)							
	A) Net operating cash flows		-	-	-	-	
	C) Capital expenditures		-	-	-	-	
	D) Change in Non Cash Current Assets		n/a	-	-	-	
	E) Change in Total Current Liabilities		-	-	-	-	
	F) Debt Adjustments		n/a	-	-	-	
	G) Other Adjustments						
	H) Projected Net Cash flow		-	-	-	-	
VI) Sources of funds							
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds		-				

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:

Template 2 - Financial Projections: **Worst Case**

In local currency (unless noted otherwise)

Sec.		Reference / Formula	Start-up Costs	Live / Operational Year 1	Year 2	Year 3	Comments / Notes
							Provide name of local currency used.
I) Projected Cash inflows and outflows							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows			-	-	-	
	D) Other cash inflows						
	E) Total Cash Inflows		-	-	-	-	
Projected Operating Cash Outflows							
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) {list type of activities being outsourced}						
	ii) {list type of activities being outsourced}						
	iii) {list type of activities being outsourced}						
	iv) {list type of activities being outsourced}						
	v) {list type of activities being outsourced}						
	vi) {list type of activities being outsourced}						
	L) Other Operating costs						
	M) Total Operating Cash Outflows		-	-	-	-	
	N) Projected Net Operating Cash flow		-	-	-	-	
IIa) Break out of Fixed and Variable Operating Cash Outflows							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows		-	-	-	-	
		CHECK	-	-	-	-	
IIb) Break out of Critical Function Operating Cash Outflows							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows		-	-	-	-	
	H) 3-year Total		-				
III) Projected Capital Expenditures							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures		-	-	-	-	
IV) Projected Assets & Liabilities							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets		-	-	-	-	
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities		-	-	-	-	
	I) Total Property, Plant & Equipment (PP&E)		-	-	-	-	
	J) 3-year Reserve			-	-	-	
	K) Other Long-term Assets						
	L) Total Long-term Assets		-	-	-	-	
	M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)							
	A) Net operating cash flows		-	-	-	-	
	C) Capital expenditures		-	-	-	-	
	D) Change in Non Cash Current Assets		n/a	-	-	-	
	E) Change in Total Current Liabilities		-	-	-	-	
	F) Debt Adjustments		n/a	-	-	-	
	G) Other Adjustments						
	H) Projected Net Cash flow		-	-	-	-	
VI) Sources of funds							
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds		-				

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:

gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.

II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 Public Objection and Dispute Resolution Process

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 Grounds for Objection

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm.

3.2.2 Standing to Object

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a "quick look" designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 String Confusion Objection

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 Legal Rights Objection

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name[1]:

a) An international treaty between or among national governments must have established the organization; and

b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 Limited Public Interest Objection

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

[1] See also http://www.iana.org/domains/int/policy/.

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.[2]

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

[2] The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website http://www.echr.coe.int.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France (2003); Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest[3] followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

[3] *See* http://www.icann.org/en/announcements/announcement-21dec07.htm.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against "highly objectionable" gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 Filing Procedures

The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See http://newgtlds.icann.org/en/program-status/objection-dispute-resolution.

3.3.1 Objection Filing Procedures

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
  - A statement giving the specific ground upon which the objection is being filed.
  - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 Mediation

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 Selection of Expert Panels

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 ("Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law"), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.

2. Whether the objector's acquisition and use of rights in the mark has been bona fide.

3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.

4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.

6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;

2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:

    a. Level of global recognition of both entities;

    b. Length of time the entities have been in existence;

    c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6*ter* of the Paris Convention for the Protection of Industrial Property.

3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;

4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and

5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

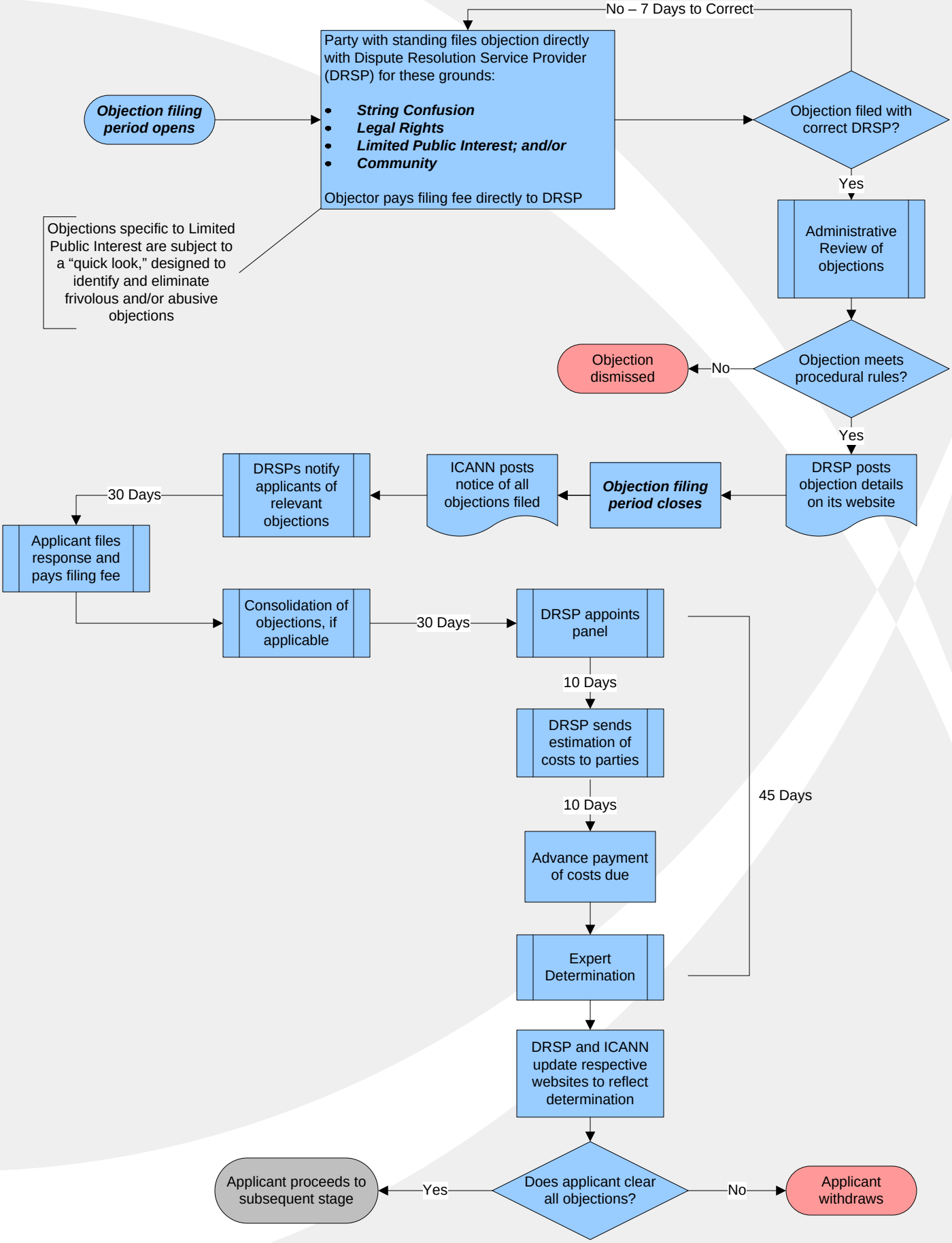
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

Ex. R-5

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW GTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

(a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.

(b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").

(c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

(a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.

(b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.

(c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).

(e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:

(i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.

(ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

(iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.

(iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.

(f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

(a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.

(b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.

(c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

(d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

(a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.

(b) The applicable DRSP Rules are the following:

(i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.

(ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.

(iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.

(iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.

(c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

(d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.

(e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

(a) The language of all submissions and proceedings under this Procedure shall be English.

(b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

(a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.

(b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.

(c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.

(d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.

(e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.

(f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

(a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.

(b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.

(c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):

(i) A String Confusion Objection must be filed at: [●].

(ii) An Existing Legal Rights Objection must be filed at: [●].

(iii) A Limited Public Interest Objection must be filed at: [●].

(iv) A Community Objection must be filed at: [●].

(d) All Objections must be filed separately:

(i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).

(ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).

(e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

(a) The Objection shall contain, *inter alia*, the following information:

(i) The names and contact information (address, telephone number, email address, etc.) of the Objector;

(ii) A statement of the Objector's basis for standing; and

(iii) A description of the basis for the Objection, including:

(aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;

(bb) An explanation of the validity of the Objection and why the objection should be upheld.

(b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.

(c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

(a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

(b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.

(c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.

(d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.

(e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (ii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

(a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.

(b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

(a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).

(b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).

(c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

(d) The Response shall contain, inter alia, the following information:

(i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and

(ii) A point-by-point response to the statements made in the Objection.

(e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.

(f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.

(g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.

(g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

(a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.

(b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.

(c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.

(d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

(a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.

(b) Number and specific qualifications of Expert(s):

(i) There shall be one Expert in proceedings involving a String Confusion Objection.

(ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.

(iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.

(iv) There shall be one Expert in proceedings involving a Community Objection.

(c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.

(d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.

(e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

(a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").

(b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.

(c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.

(d) Failure to make an advance payment of Costs:

(i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

(ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.

(e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

(a) The parties may be represented or assisted by persons of their choice.

(b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

(a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.

(b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.

(c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.

(d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.

(e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

(a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.

(b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

(a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.

(b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.

(c) In the event that the Panel decides to hold a hearing:

(i) The Panel shall decide how and where the hearing shall be conducted.

(ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.

(iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.

(iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

(a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.

(b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.

(c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

(a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.

(b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.

(c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

(d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.

(e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.

(f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.

(g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

(a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.

(b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.

gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or

2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

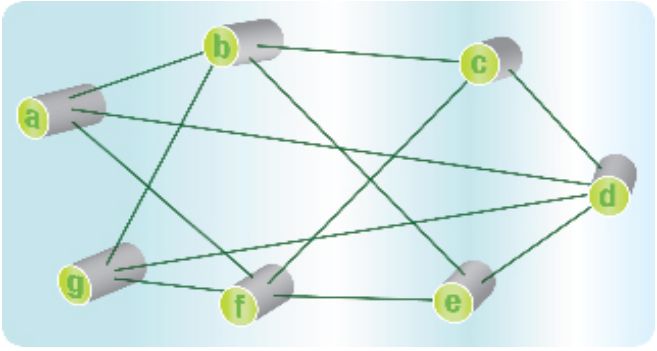


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

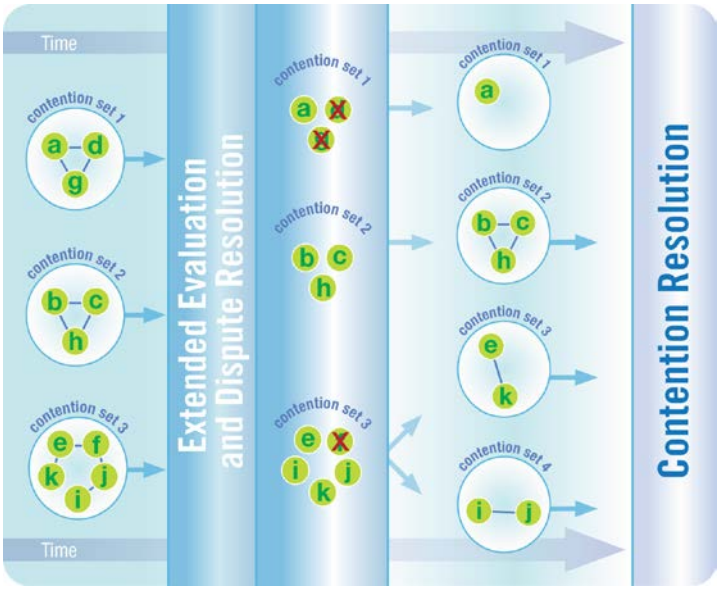


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 Impact of String Confusion Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

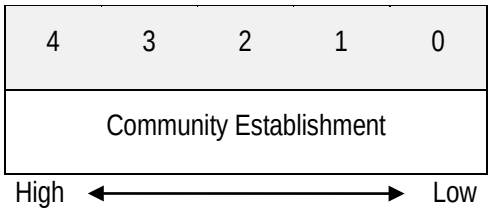
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:

4	3	2	1	0
Nexus between String & Community				

High ◄——————► Low

As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0

name.

B. Uniqueness (1)

1	0
String has no other significant meaning beyond identifying the community described in the application.	String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

Criterion 2 Definitions

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

Criterion 2 Guidelines

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

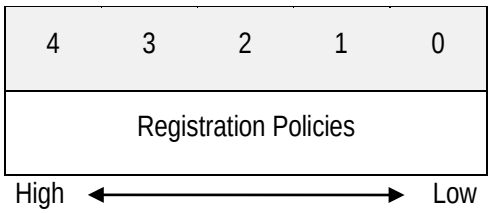
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

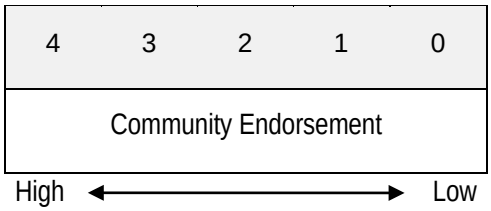
- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

Criterion 3 Guidelines

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

Criterion #4: Community Endorsement (0-4 points)



As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.[1]

[1] The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

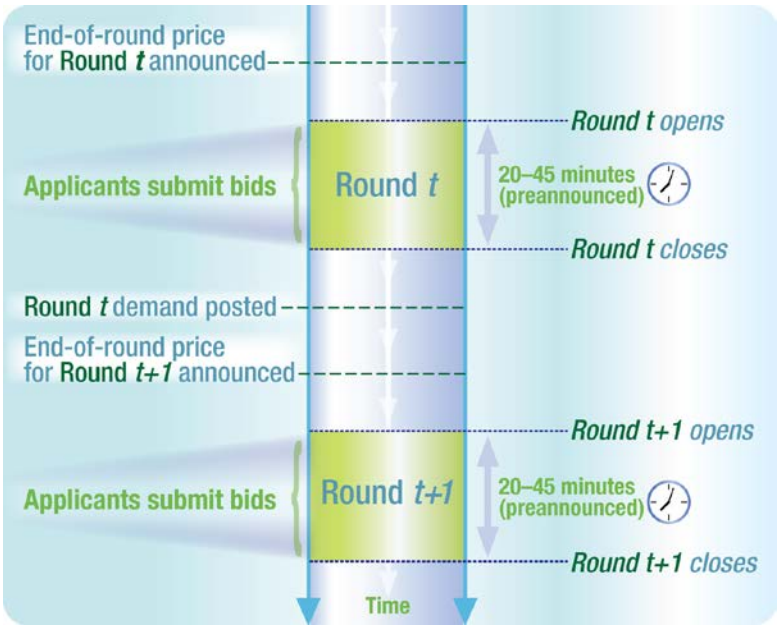


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.

3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.

5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.

6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.

7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.

    - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.

    - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.

    - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.

    - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.

- If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.

8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

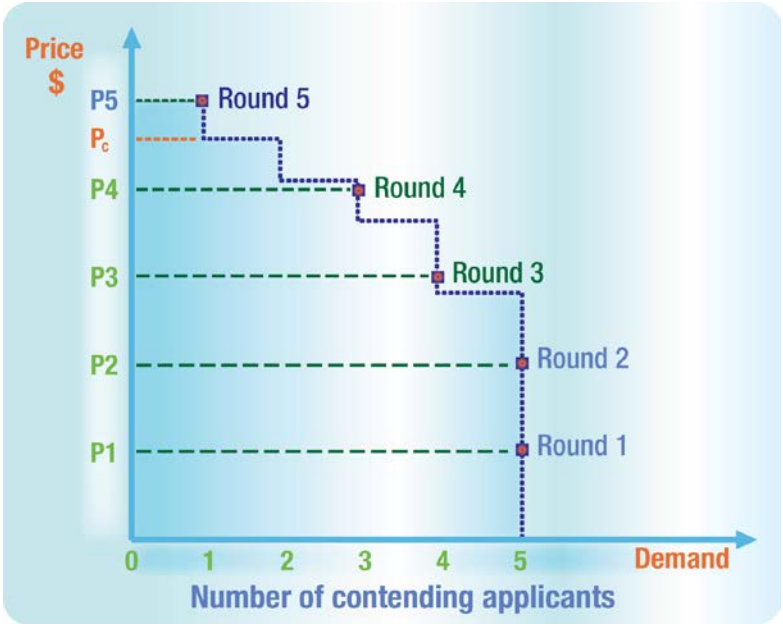


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1.

- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1. Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2.

- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2. The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3.

- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3, while the other four bidders submit bids of at least P_3. The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4.

- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4, while the other three remaining bidders submit bids of at least P_4. The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5.

- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4, and one of the bidders submits an exit bid at P_c midway between P_4 and P_5. The final bidder submits a bid greater than P_c. Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c, as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN—together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.[2] Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

[2] If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

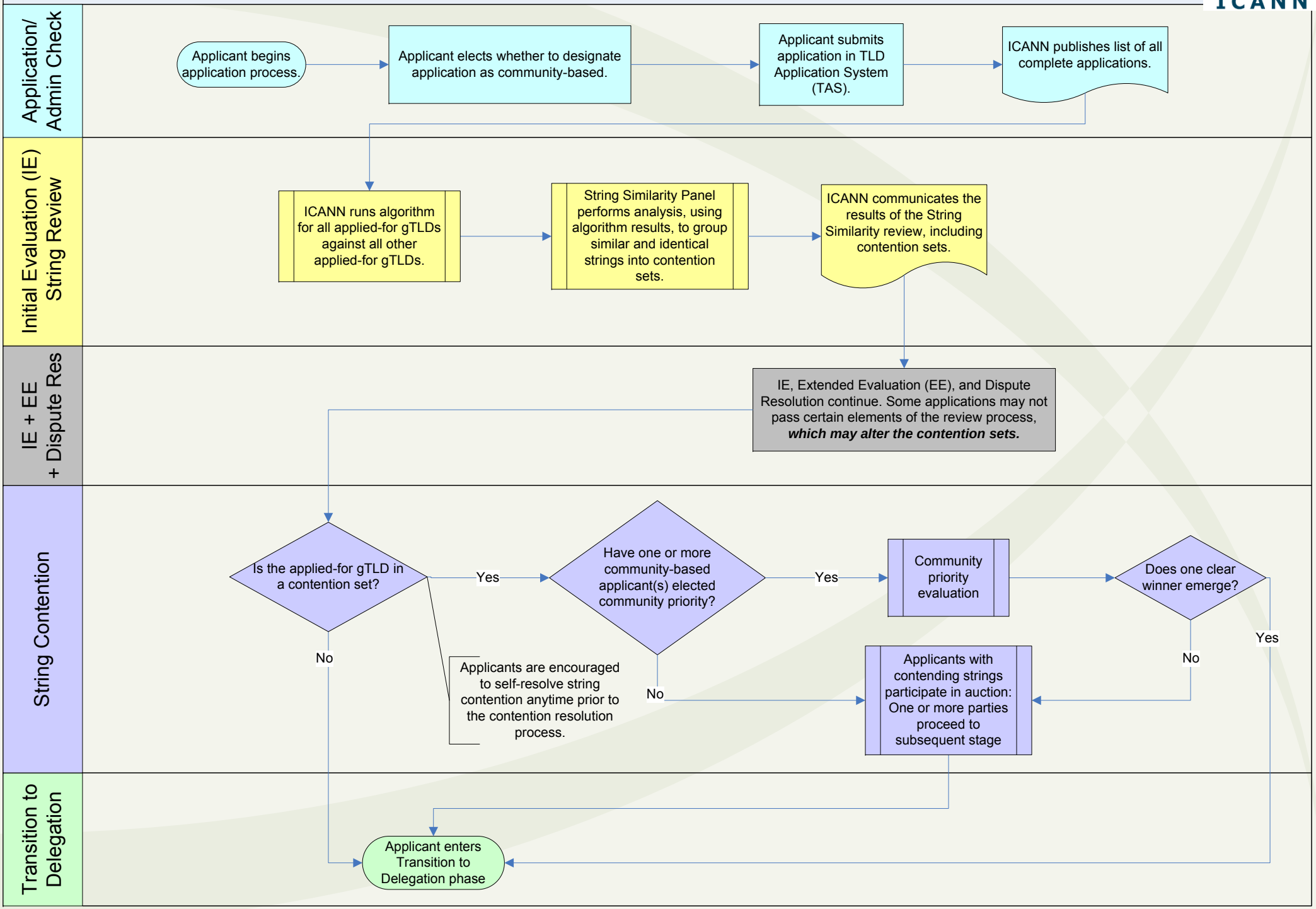
4.4 Contention Resolution and Contract Execution

An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

DRAFT - New gTLD Program - String Contention

Ex. R-5



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).

2. Confirmation of contact information and signatory to the agreement.

3. Notice of any material changes requested to the terms of the agreement.

4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 Pre-Delegation Testing

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 Testing Procedures

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

IDN support -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in http://iana.org/procedures/idn-repository.html.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

Escrow deposit -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at http://iana.org/domains/root/.

5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591[1]:

"The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

[1] See http://www.rfc-editor.org/rfc/rfc1591.txt

the central IR[2] (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience."

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies. gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)[3] following the process in Annex A of the ICANN Bylaws.[4] The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at http://www.icann.org/en/general/consensus-policies.htm.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

[2] IR is a historical reference to "Internet Registry," a function now performed by ICANN.
[3] http://gnso.icann.org
[4] http://www.icann.org/en/general/bylaws.htm#AnnexA

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process. This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 What is Expected of ICANN

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

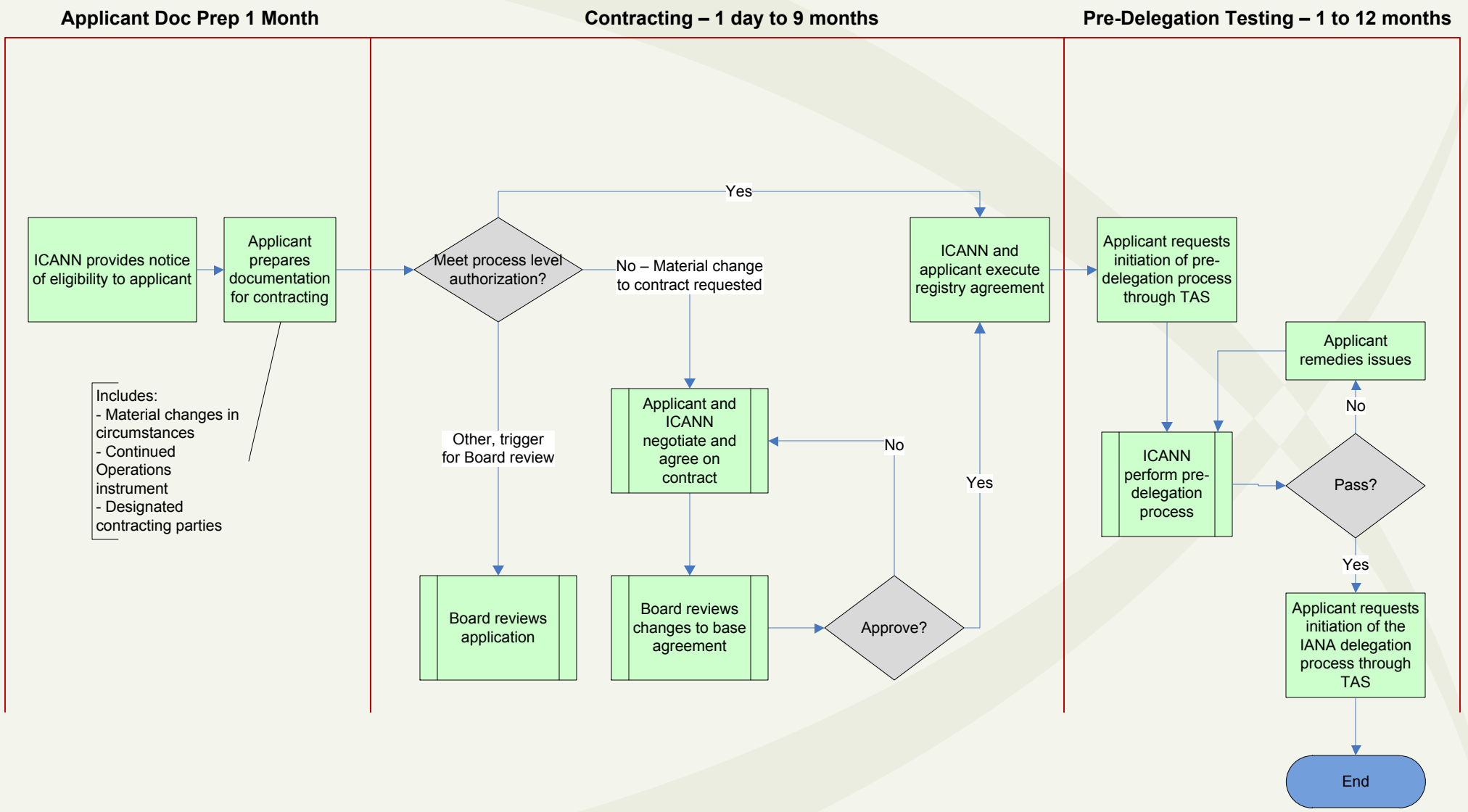
ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See http://www.icann.org/en/compliance/ for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

Ex. R-5

Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this "Agreement") is entered into as of _____ (the "Effective Date") between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation ("ICANN"), and _____, a _____ ("Registry Operator").

ARTICLE 1.

DELEGATION AND OPERATION OF TOP–LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is ____ (the "TLD"). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the "Continued Operations Instrument"), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] ("Specification 6") and such other Registry Services set forth on Exhibit A (collectively, the "Approved Services"). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an "Additional Service"), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at http://www.icann.org/en/registries/rsep/rsep.html, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the "ICANN Bylaws") applicable to Consensus Policies (the "RSEP"). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Polices and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* ("Specification 1").

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* ("Specification 4").

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* ("Specification 5"). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

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2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* ("Specification 7"). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a "Qualified Marketing Program" is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator's obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

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(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person ("Personal Data") submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 *[Note: For Community-Based TLDs Only]* Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at http://www.iana.org/domains/root/ will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at http://www.iana.org/domains/root/.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) [*Applicable to intergovernmental organizations or governmental entities only.*] ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[*Alternative* ***Section 4.5 Transition of Registry upon Termination of Agreement*** *text for intergovernmental organizations or governmental entities or other special circumstances*:

"**Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement."]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

"**Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at http://www.icann.org/en/registries/rsep/. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator."]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator's aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN's total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator's liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN's reasonable satisfaction, such other registry operators' culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [***Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.***]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator's sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN's policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator's cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [***Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.***]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on "Security" shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on "Stability" shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

Registry Operators (the "Applicable Registry Agreements") is desirable (each, a "Special Amendment"), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the "Posting Period") and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the "Approval Period"), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an "Approved Amendment") by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the "Amendment Approval Date") and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an "Exemption Request"). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN's receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:
[_____]
[_____]
[_____]
Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

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* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[_____]
President and CEO
Date:

[Registry Operator]

By: _____
[_____]
[_____]
Date:

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. **Consensus Policies.**

1.1. "***Consensus Policies***" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.

1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");

1.2.2. functional and performance specifications for the provision of Registry Services;

1.2.3. Security and Stability of the registry database for the TLD;

1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;

1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or

1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:

1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);

1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;

1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and

1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

1.4. In addition to the other limitations on Consensus Policies, they shall not:

1.4.1. prescribe or limit the price of Registry Services;

1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;

1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;

1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or

1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("***Temporary Policies***").

2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.

2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.

2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.

3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Polices or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2
DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("***Escrow Agent***") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits**. There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
   1.1 "**Full Deposit**" will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
   1.2 "**Differential Deposit**" means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).

2. **Schedule for Deposits**. Registry Operator will submit a set of escrow files on a daily basis as follows:
   2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
   2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification.**
   3.1 **Deposit's Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.

   3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional "extension schemas" shall be defined in a case by case base to represent that data. These "extension schemas" will be specified as described in [1]. Data related to the "extensions schemas" will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
   (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
   (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
   (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
   (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
   (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
   (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.

5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
   5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
   5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be “2009-08-02”;
   5.3 {type} is replaced by:
      (1) “full”, if the data represents a Full Deposit;
      (2) “diff”, if the data represents a Differential Deposit;
      (3) “thin”, if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
   5.4 {#} is replaced by the position of the file in a series of files, beginning with “1”; in case of a lone file, this must be replaced by “1”.
   5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with “0”:
   5.6 {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.

7. **Notification of Deposits**. Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].

8. **Verification Procedure**.
   (1) The signature file of each processed file is validated.
   (2) If processed files are pieces of a bigger file, the latter is put together.
   (3) Each file obtained in the previous step is then decrypted and uncompressed.
   (4) Each data file contained in the previous step is then validated against the format defined in [1].
   (5) If [1] includes a verification process, that will be applied at this step.
   If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9. **References**.
[1] Domain Name Data Escrow Specification (work in progress), http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow
[2] OpenPGP Message Format, http://www.rfc-editor.org/rfc/rfc4880.txt
[3] OpenPGP parameters, http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent**. Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.

2. **Fees**. Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.

3. **Ownership**. Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.

4. **Integrity and Confidentiality**. Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent’s compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

   If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party’s expense. Any party requesting additional assistance shall pay Escrow Agent’s standard charges or as quoted upon submission of a detailed request.

5. **Copies**. Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6. **Release of Deposits**. Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:

6.1 the Registry Agreement has expired without renewal, or been terminated; or

6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or

6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or

6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or

6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or

6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. Verification of Deposits.

7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.

7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.

8. Amendments. Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.

9. Indemnity. Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-transactions-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "gTLD-activity-yyyymm.csv", where "gTLD" is the gTLD name; in case of an IDN-TLD, the A-label shall be used; "yyyymm" is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name "check" requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name "create" requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name "delete" requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name "info" requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		"renew" requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact "create" requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact "delete" requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact "info" requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact "transfer" requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact "transfer" requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact "transfer" requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact "transfer" requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact "transfer" requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact "update" requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. **Domain Name Data:**

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. **Registrar Data:**

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www. example-registrar.tld
Admin Contact: Joe Registrar
Phone Number: +1.3105551213
Fax Number: +1.3105551213
Email: joeregistrar@example-registrar.tld
Admin Contact: Jane Registrar
Phone Number: +1.3105551214
Fax Number: +1.3105551213
Email: janeregistrar@example-registrar.tld
Technical Contact: John Geek
Phone Number: +1.3105551215
Fax Number: +1.3105551216
Email: johngeek@example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. **Nameserver Data:**

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
IP Address: 192.0.2.123
IP Address: 2001:0DB8::1
Registrar: Example Registrar, Inc.
WHOIS Server: whois.example-registrar.tld
Referral URL: http://www. example-registrar.tld
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability**. Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. **Zone File Access**

2.1. **Third-Party Access**

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the "CZDA Provider"). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1. 2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator's Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard**. Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No $ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No $INCLUDE directives.
12. No $TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2 Co-operation

2.2.1. **Assistance**. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3 ICANN Access. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. **Bulk Registration Data Access to ICANN**

3.1. **Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. **Contents**. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. **Format**. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3, **Access**. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. **Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label "EXAMPLE**" shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.

2. **Two-character labels**. All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.

3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").

4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.

5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:

    5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union <http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;

    5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

    5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

    provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. **Standards Compliance**

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP**. Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC**. Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions ("DNSSEC"). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants' public-key material. Registry Operator shall publish its DPS following the format described in "DPS-framework" (currently in draft format, see http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework) within 180 days after the "DPS-framework" becomes an RFC.

1.4. **IDN**. If the Registry Operator offers Internationalized Domain Names ("IDNs"), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6**. Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. **Registry Services**

2.1. **Registry Services**. "Registry Services" are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition**. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a "Name Error" response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. **Registry Continuity**

3.1. **High Availability**. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event**. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity**. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. **Abuse Mitigation**

4.1. **Abuse Contact**. Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records**. Registry Operators shall take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods**. Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods**. Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms ("RPMs") that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party's legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and

b. the Uniform Rapid Suspension system ("URS") adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6^{th}) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.

2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an "Alternative Instrument"). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:

    a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;

    b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;

    c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");

    d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or

    e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.

2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3. Registry Operator will conduct internal reviews at least once per calendar year to

ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.

4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.

5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.

6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. **Definitions**

1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.

1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.

1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.

1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.

1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.

1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.

1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.

1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. **Service Level Agreement Matrix**

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. **DNS**

3.1. **DNS service availability**. Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from "**DNS tests**" to each of their public-DNS registered "**IP addresses**" to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.

3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered "**IP address**" of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered "**IP address**" of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from "**DNS tests**" to a name server "**IP address**" during a given time, the name server "**IP address**" will be considered unavailable.

3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.

3.5. **DNS resolution RTT.** Refers to either "**UDP DNS resolution RTT**" or "**TCP DNS resolution RTT**".

3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer "**DNS queries**" with data consistent with the change made. This only applies for changes to DNS information.

3.7. **DNS test.** Means one non-recursive DNS query sent to a particular "**IP address**" (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a "**DNS resolution RTT**" 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the "**DNS resolution RTT**" or, undefined/unanswered.

3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP "**DNS test**" to each of the public-DNS registered "**IP addresses**" of the name servers of the domain

name being monitored. If a "**DNS test**" result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP "**DNS test**" approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of "**WHOIS query RTT**" and "**Web-based-WHOIS query RTT**".

4.5. **RDDS update time**. Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular "**IP address**" of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered "**IP addresses**" of the servers for each RDDS service of the TLD being monitored and make an "**RDDS test**" to each one. If an "**RDDS test**" result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with "**EPP command RTT**" 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to "**EPP session-command RTT**", "**EPP query-command RTT**" or "**EPP transform-command RTT**".

5.6. **EPP test.** Means one EPP command sent to a particular "**IP address**" for one of the EPP servers. Query and transform commands, with the exception of "create", shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the "**EPP command RTT**" or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one "**IP address**" of the EPP servers of the TLD being monitored and make an "**EPP test**"; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an "**EPP test**" result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. Emergency Thresholds

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. Emergency Escalation initiated by ICANN

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN's emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator's emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. **Covenants of Performance Measurement**

8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).

8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLR**s described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.

1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.

1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.

1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.

1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.

1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.

2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:

2.5.1 provide 24 hour accessibility seven days a week (database administrator);
2.5.2 employ systems that are technically reliable and secure (database administrator);
2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
2.5.5 allow for multiple languages, with exact implementation details to be determined;
2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.

3.2 The standards for inclusion in the Clearinghouse are:

3.2.1 Nationally or regionally registered word marks from all jurisdictions.
3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.

3.2.4 Other marks that constitute intellectual property.

3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.

3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.

3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.

3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.

3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.

3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).

3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.

4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.

4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:

5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;

5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;

5.1.3 Electronic contact information is provided and accurate;

5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.

5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

6.1 Trademark Claims service

6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.

6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).

6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.

6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.

6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.

6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.

7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below. ***Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]***

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration. ***If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.***

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.
The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:
****** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

UNIFORM RAPID SUSPENSION SYSTEM ("URS")
4 JUNE 2012

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.

b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.

c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

1.2.1 Name, email address and other contact information for the Complaining Party (Parties).

1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.

1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).

1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.

1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.

1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)

b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or

b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or

c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or

d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.

4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.

5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.

5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.

5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:

5.4.1 Confirmation of Registrant data.

5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.

5.4.3 Any defense which contradicts the Complainant's claims.

5.4.4 A statement that the contents are true and accurate.

5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.

5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:

5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or

5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:

5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.

5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.

5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.

5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.

5.9 Other factors for the Examiner to consider:

5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.

5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.

6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.

6.3 All Default cases proceed to Examination for review on the merits of the claim.

6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.

6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.

6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

7.1 One Examiner selected by the Provider will preside over a URS proceeding.

7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid "forum or examiner shopping." URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:

8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and

8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.

8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.

8.1.2 The Registrant has no legitimate right or interest to the domain name; and

8.1.3 The domain was registered and is being used in a bad faith.

8.2 The burden of proof shall be clear and convincing evidence.

8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).

8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.

8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.

9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.

9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.

9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.

9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.

9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.

10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.

10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.

11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) "deliberate material falsehood," that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.

11.3 A Complaint may be deemed abusive if the Examiner determines:

11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and

11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support

11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.

11.5 Two findings of "deliberate material falsehood" shall permanently bar the party from utilizing the URS.

11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.

11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.

12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.

12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor or the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.

12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.

12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.

12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.

12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

5.1 The mandatory administrative proceeding will commence when a third-party complainant ("Complainant") has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator's manner of operation or use of the gTLD.

5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial "threshold" review ("Threshold Review Panel").

6. Standards

For purposes of these standards, "registry operator" shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where 'control' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator's affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant's mark, causes or materially contributes to the gTLD doing one of the following*:*

(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(b) impairing the distinctive character or the reputation of the complainant's mark; or

(c) creating a likelihood of confusion with the complainant's mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator's affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.

7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:

(a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.

(b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.

(c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.

(d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) it willingness to meet to resolve the issue.

(e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.

(f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.

(g) A statement that the proceedings are not being brought for any improper purpose.

(h) A statement describing how the registration at issue has harmed the trademark owner.

7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.

8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliant and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.

8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.

9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:

9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;

9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse

9.2.1.2 Proof of use may also be submitted directly with the Complaint.

9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;

9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and it willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider to will commence the proceedings on the merits.

10. Response to the Complaint

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.

10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.

10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.

11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.

12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.

12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.

12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.

13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.

13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.

14.2 The Complainant shall be required to pay the filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel's own accord, or upon request from the Parties.

15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.

15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.

16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.

16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.

18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:

18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:

(a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or

(b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;

18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18.5 The Expert Panel may also determine whether the Complaint was filed "without merit," and, if so, award the appropriate sanctions on a graduated scale, including:

18.5.1 Temporary bans from filing Complaints;

18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and

18.5.3 Permanent bans from filing Complaints after being banned temporarily.

18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.

19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel's Determination.

19.4 The Expert Determination shall state which party is the prevailing party.

19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.

20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.

20.4 The fees for an appeal in the first instance shall be borne by the appellant.

20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.

20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.

20.7 The prevailing party shall be entitled to an award of costs of appeal.

20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.

21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.

21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.

21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.

22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)[1]
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider ("Provider") is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

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[1] Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant's satisfaction does not itself give the complainant standing to file an RRDRP complaint.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

5.1 The mandatory administrative proceeding will commence when a third-party complainant ("Complainant") has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.

5.2 Established institutions associated with defined communities are eligible to file a community objection. The "defined community" must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.

5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.

5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant's standing.

6. Standards

6.1 For a claim to be successful, the claims must prove that:

6.1.1 The community invoked by the objector is a defined community;

6.1.2 There is a strong association between the community invoked and the gTLD label or string;

6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;

6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.

7.2.3 A statement of the nature of the dispute, which must include:

7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and

7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.

7.2.4 A statement that the proceedings are not being brought for any improper purpose.

7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.

7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.

8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.

9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.

9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.

9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in it Response the specific grounds for the claim.

9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.

10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.

11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.

11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.

11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.

12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.

12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.

12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.

13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.

14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.

14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

15.1 Disputes under this RRDRP will usually be resolved without a hearing.

15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.

15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.

15.4 Hearings should last no more than one day, except in the most exceptional circumstances.

15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.

15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.

17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:

17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:

(a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or

(b) direct actions by the registry operator that are contrary to those required under the registry agreement

17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.

17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.

18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.

18.4 The Expert Determination shall state which party is the prevailing party.

18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RRDRP proceeding for a reasonable fee to cover the costs of the appeal.

19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.

19.4 The fees for an appeal in the first instance shall be borne by the appellant.

19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.

19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.

19.7 The prevailing party shall be entitled to an award of costs of appeal.

19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.

20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.

21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.

gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application – Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.

2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.

3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.

5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement http://newgtlds.icann.org/en/applicants/agb/program-privacy, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:

    a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;

    b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;

    c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

d. Applicant may be requested to supply certain information in the original language as well as in English.

9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.

10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to:

a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;

b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

Ex. R-6

RESPONDENT'S EXHIBIT

Ex. R-6

ICANN | ARCHIVES

Internet Corporation for Assigned Names and Numbers

Please note:
You are viewing archival ICANN material. Links and information may be outdated or incorrect. Visit **ICANN's main website** for current information.

Applicant Guidebook

The information on this page is posted for archival purposes only.

The current information on the new gTLD program is available at: http://newgtlds.icann.org/

This page contains all the current and archived versions of the Applicant Guidebook and key documentation related to the proposed application process. Applicants will be able to apply via an online application system called TAS – **T**LD **A**pplication **S**ystem. The details on how to apply for a gTLD through TAS will be available in the upcoming months.

See also:

- Information Center
- Public Comments

Current Version of the Draft Applicant Guidebook

- **New gTLD Applicant Guidebook** [4.81 MB] *(May 11)*
  - [14.02 MB] العربية
  - 中文 [11.36 MB]
  - Français [9.99 MB]
  - Español [8.37 MB]
  - Русский [10.76 MB]
- Matrix presenting the Applicant Guidebook in full and by module along with Explanatory Memos and Supporting Documents

Archived Draft Applicant Guidebook Versions & Related Public Fora

1. **Applicant Guidebook – April 2011 Discussion Draft** ***(Apr 11)***

   - Applicant Guidebook – April 2011 Discussion Draft [6.18 MB] *(Apr 11)*
     - Public Comment Forum *(Open 15 Apr – Closed 15 May)*
   - Summary & Analysis [1.1 MB] *(30 May 11)*
     - GAC comments on the Applicant Guidebook (April 15th, 2011 version) [112 KB] *(26 May 11)*

2. **Proposed Final Applicant Guidebook (Nov 10)**

- Proposed Final Applicant Guidebook [3.1 MB] *(Nov 10)*
- Public Comment Forum *(Closed on 15 Jan 11)*
- Summary & Analysis [709 KB]
  - [986 KB] العربية
  - Español [1.33 MB]
  - Français [661 KB]
  - Русский [841 KB]
  - 中文 [841 KB]

3. **Draft Applicant Guidebook, version 4 (May 10)**

- Draft Applicant Guidebook, version 4 [4.67 MB] *(May 10)*
- Public Comment Forum *(closed 21 Jul 10)*
- Summary & Analysis [1.4 MB]

4. **Draft Applicant Guidebook, version 3 (Oct 09)**

- Full Draft Applicant Guidebook, version 3 [1.6 MB] *(Oct 09)*
- Public Comment Forum *(closed on 22 Nov 09)*
  Note: this archived public forum also contains explanatory memoranda relating to version 3 of the Draft Applicant Guidebook.
- Summary & Analysis [1.13 MB]

5. **Excerpts Organized Per Module (May 09)**
   Note: In May 2009, ICANN did not release a version 3 of the Draft Applicant Guidebook. Instead, ICANN released a series of Excerpts organized below per module.

- Update to Module 2: String Requirement
  Excerpt: String Requirements [139 KB]
- Update to Module 2: Geographical Names
  Excerpt: Geographical Names [140 KB]
- Update to Module 2: Evaluation Criteria
  Excerpt: Evaluation Criteria [1.4 MB]
- Update to Module 3: Dispute Resolution Procedures
  Excerpt: Dispute Resolution [160 KB]
- Update to Module 4: Comparative Evaluation (Community Priority)
  Excerpt: Comparative Evaluation Criteria [212 KB]
- Updates to Module 5: Registry Agreement Specifications
  Excerpt: Registry Specifications [162 KB]
- Public Comment Forum (*closed on 20 Jul 09)*
  Note: this archived public forum will also contain explanatory memoranda relating to this version of the Draft Applicant Guidebook.

6. **Draft Applicant Guidebook, version 2 (Feb 09)**

- Draft Applicant Guidebook, version 2 [1.46 MB]

Draft Applicant Guidebook, version 2 Redline [1.6 MB]

Draft Applicant Guidebook version 2
Public Comments Analysis Report [1.52 MB]

- Public Comment Forum (*closed on 13 Apr 09)*
  Note: this archived public forum also contains explanatory memoranda relating to version 2 of the Draft Applicant Guidebook.

7. **Draft Applicant Guidebook, version 1 (Oct 08)**

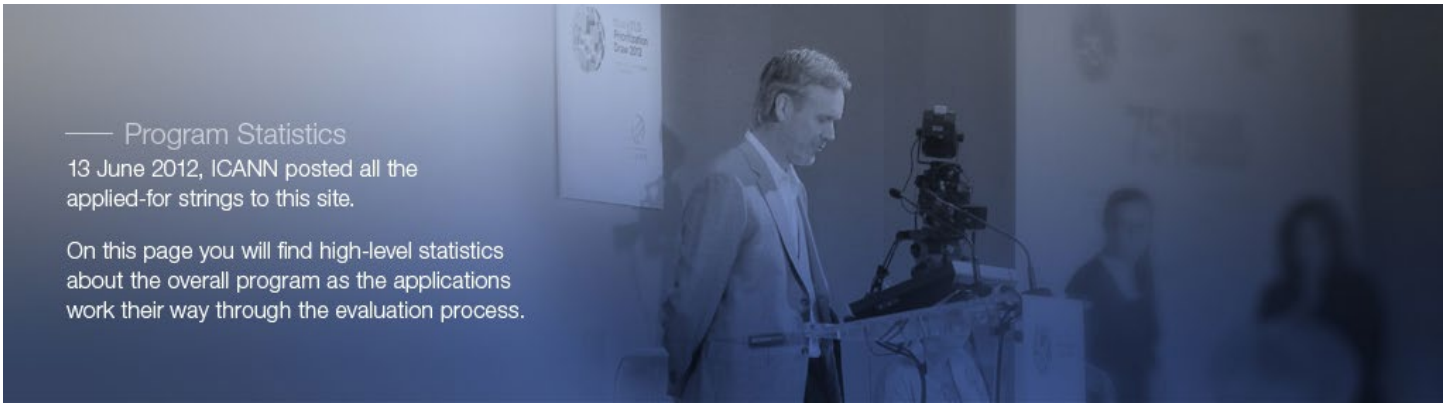
Draft Applicant Guidebook, version 1 [1.24 MB]

Draft Applicant Guidebook, version 1 Public Comments Analysis Report [589 KB] *(Feb 09)*

- Public Comment Forum *(closed on 15 Dec 08)*
  Note: this archived public forum also contains explanatory memoranda relating to version 1 of the Draft Applicant Guidebook.

Ex. R-7

RESPONDENT'S EXHIBIT



Centralized Zone Data Service (CZDS)
Comments & Feedback
Current Application Status
Delegated Strings
Contention Set Status
Evaluation Panels
gTLD Correspondence
Objection & Dispute Resolution
Post-Delegation Dispute Resolution Procedures (PDDRP)
Program Statistics →
Timelines
TLD Startup Information - Sunrise and Claims Periods
Trademark Clearinghouse (TMCH)
Uniform Rapid Suspension System

RELATED LINKS
About the Program

PROGRAM STATISTICS

Current Statistics *(Updated monthly)*

Application Statistics: Overview (as of 30 November 2021)	
Total Applications Submitted	***1930***
Completed New gTLD Program (gTLD Delegated** - introduced into Internet)	1239
Applications Withdrawn	644
Applications that Will Not Proceed/Not Approved	41
Currently Proceeding through New gTLD Program*	6

Contention Resolution	
Total Contention Sets	234
Resolved Contention Sets	232
Contention Sets Resolved via ICANN Auction	16
Unresolved Contention Sets	2
Applications Pending Contention Resolution	0

New gTLD Application Quick Facts

Overview of New gTLD Applications

Contracting	
Executed Registry Agreements (completed contracting)	1255
Registry Agreements with Specification 13	494
Registry Agreements with Code of Conduct Exemption	80
In Contracting	4

Pre-Delegation Testing (PDT)	
Passed PDT	1252

**Breakdown: Delegation Statistics	
Delegated gTLDs (Introduced into Internet)	1239
Select Subcategories of Delegated gTLDs (NOTE: gTLDs may fall into more than one subcategory)	
Community	54
Geographic	53
Internationalized Domain Names (IDNs)	97

gTLD Startup Statistics (as of 1 December 2021)	
Sunrise	
Completed	608
In Progress	0
Not Started	1
Claims	
Completed	728
In Progress	226
Not Started	1

Please note: Registry Agreement and Delegated gTLD totals are not adjusted for TLDs that subsequently terminated their Registry Agreements and/or were removed from the root zone. In

addition, Specification 13 and Code of Conduct Exemption totals are not adjusted if subsequently removed.

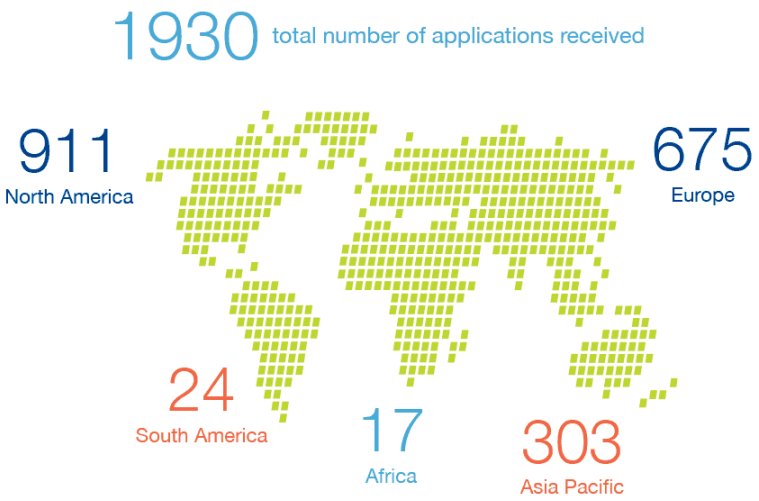
Get a status update on an individual application »

New gTLD Application Submission Statistics

The statistics in this section were calculated based on applications received by the 29 March 2012 deadline.

Application Breakdown by: Region | Type | String Similarity

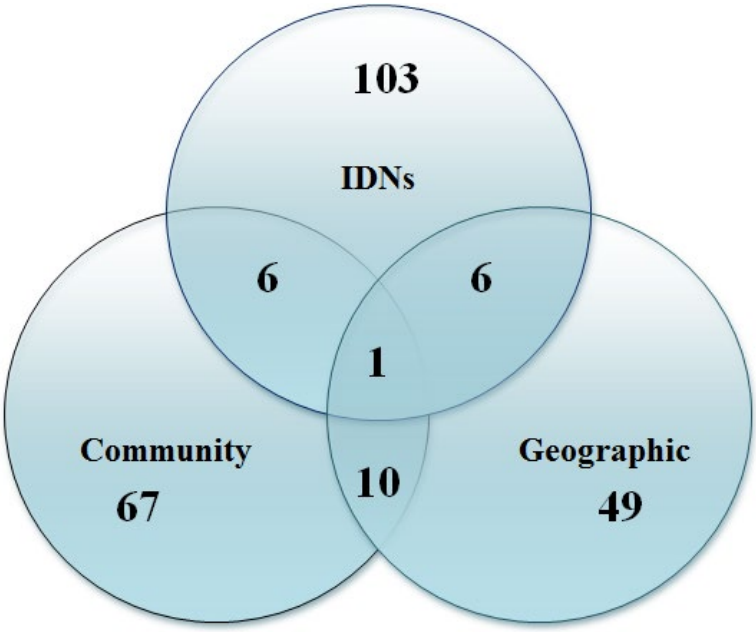
Application Breakdown by Region
Statistics as of 13 June 2012



Application Breakdown by Type
Statistics as of 13 June 2012

Application Totals

- Community: 84
- Geographic: 66
- Internationalized Domain Names: 116
  - Total Scripts Represented: 12
- Other: 1846



Application Breakdown by String Similarity
Statistics as of 26 February 2013

Approximate Number of Unique Applied-for Strings: 1,400

- Contention Sets
  - Exact Match: 230
    (two or more applications for a string with same characters)
  - Confusingly Similar: 2
    - .hotels & .hoteis
    - .unicorn & .unicom
- Applications in a Contention Set: 751

Ex. R-8

RESPONDENT'S EXHIBIT

(https://newgtlds.icann.org/en)

Español (https://newgtlds.icann.org/es/program-status/application-comments/user-guide-13jun12-es.pdf)

Français (https://newgtlds.icann.org/fr/program-status/application-comments/user-guide-13jun12-fr.pdf)

简体中文 (https://newgtlds.icann.org/zh/program-status/application-comments/user-guide-13jun12-zh.pdf)

Русский (https://newgtlds.icann.org/ru/program-status/application-comments/user-guide-13jun12-ru.pdf)

APPLICATION COMMENTS

The Application Comment Forum allows you to submit (https://gtldcomment.icann.org/applicationcomment/makeacomment) and view comments on any New gTLD Application. Below is a list of comments submitted in this Forum. All comments submitted on this Forum are displayed as submitted and in real-time below. ICANN reserves the right to remove comments that do not adhere to ICANN Expected Standards of Behavior (https://www.icann.org/en/news/in-focus/accountability/expected-standards) and ICANN's Open Comment Forum Process and Standards (https://www.icann.org/en/news/public-comment/rules-and-procedures).

If you would like to report abuse or misuse of the Application Comments Forum, please contact ICANN Global Support at globalsupport@icann.org (mailto:globalsupport@icann.org).

Search By: Applicant GCCIX WLL **Go**

Comment ID (/applicationcomment/viewcomments.commentsgrid.columns:sort/commentId?_csrf=cda5e7bd-7882-496e-aa60-e1b7f8ae6c3c)	**Applicant** (/applicationcomment/viewcomments.commentsgrid.columns:sort/a_csrf=cda5e7bd-7882-496e-aa60-e1b7f8ae6c3c)
ilrxo6sa (/applicationcomment/commentdetails/11222)	GCCIX WLL
291nywxw (/applicationcomment/commentdetails/10899)	GCCIX WLL
8auksma8 (/applicationcomment/commentdetails/10887)	GCCIX WLL
wp6zs2ho (/applicationcomment/commentdetails/10834)	GCCIX WLL
aqqb2pf9 (/applicationcomment/commentdetails/10775)	GCCIX WLL
kmoqqc80 (/applicationcomment/commentdetails/10744)	GCCIX WLL
2jafhu4b (/applicationcomment/commentdetails/10554)	GCCIX WLL
hm14yi2n (/applicationcomment/commentdetails/10363)	GCCIX WLL
vrq4rfxu (/applicationcomment/commentdetails/10355)	GCCIX WLL
nr3nm0v4 (/applicationcomment/commentdetails/6284)	GCCIX WLL
w9l0e1s4 (/applicationcomment/commentdetails/5909)	GCCIX WLL
bpbxe44i (/applicationcomment/commentdetails/5908)	GCCIX WLL

Comment ID (/applicationcomment/viewcomments.commentsgrid.columns:sort/commentId?_csrf=cda5e7bd-7882-496e-aa60-e1b7f8ae6c3c)	Applicant (/applicationcomment/viewcomments.commentsgrid.columns:sort/a_csrf=cda5e7bd-7882-496e-aa60-e1b7f8ae6c3c)
lu2vp6vx (/applicationcomment/commentdetails/5907)	GCCIX WLL
su6mwkyy (/applicationcomment/commentdetails/5906)	GCCIX WLL
68sgv6oe (/applicationcomment/commentdetails/4975)	GCCIX WLL
q2p5os0v (/applicationcomment/commentdetails/4219)	GCCIX WLL
aocurtpe (/applicationcomment/commentdetails/3705)	GCCIX WLL
xqiq60om (/applicationcomment/commentdetails/2921)	GCCIX WLL
e94ax5uq (/applicationcomment/commentdetails/2507)	GCCIX WLL
8nhqjri9 (/applicationcomment/commentdetails/2454)	GCCIX WLL
7lioi10o (/applicationcomment/commentdetails/2109)	GCCIX WLL
ssber1x8 (/applicationcomment/commentdetails/2085)	GCCIX WLL
8rjod8ot (/applicationcomment/commentdetails/1722)	GCCIX WLL
j5j9nxx2 (/applicationcomment/commentdetails/1242)	GCCIX WLL
zl3k5448 (/applicationcomment/commentdetails/1223)	GCCIX WLL

Display comments 1 - 25 of 25

Ex. R-9

RESPONDENT'S EXHIBIT

GAC Early Warning – Submittal GCC-AE-21010

Application ID:	1-1936-21010
Entity/Applicant Name:	GCCIX WLL
String:	GCC
Early Warning Issue Date:	20 November 2012

Early Warning Description – This will be posted publicly:

The governments of Bahrain, Oman, Qatar and UAE and the Gulf Cooperation Council would like to express its serious concerns toward ".GCC" new gTLD application made by GCCIX WLL specifically in two areas as highlighted below:

(1) The applied for new gTLD exactly matches a name of an Intergovernmental Organization

(2) Lack of community involvement and support

Reason/Rationale for the Warning – This will be posted publicly:

(1) The applied for new gTLD exactly matches a name of an Intergovernmental Organization

GCC is a known abbreviation for Gulf Cooperation Council.
The GCC is a political and economic union of the Arab states bordering the Arabian Gulf, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

The GCC was established in an agreement (Charter of the Co-operation Council for the Arab States of the Gulf) concluded on 25 May 1981 in Abu Dhabi. This charter is available on UN database of treaties with registration number I-21244 and UNTS volume 1288

- Information about the treaty available here: http://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e04ff

- English copy of the treaty is available at: http://treaties.un.org/doc/Publication/UNTS/Volume%201288/volume-1288-I-21244-English.pdf

Moreover the GCC is considered an **Intergovernmental Organization** and it meets the eligibility criteria for .int top level domain as it has been established through a treaty registered by United Nations and recognized to have independent international legal personality. The GCC has permanent headquarter (GCC Secretariat General) in Riyadh, Saudi Arabia. Furthermore, the

GCC has received a standing invitation to participate as observer in the sessions and the work of the UN General Assembly and maintaining permanent offices at Headquarters. The Office of the Permanent Observer for the GCC to the United Nations is located at 100 Park Avenue, Suite 1600, New York, N.Y. 10017, Telephone: (212) 880-6463.
Further information about GCC can be found at the website www.gcc-sg.org/eng

Therefore and in line with new gTLD program Applicant Guidebook provisions concerning **protection of IGOs**, the name "GCC" **should not be allowed to be registered** as a gTLD unless sufficient approvals are obtained from the IGO.

(2) Lack of community involvement and support

In its application, the applicant states the following (18a):

".GCC will create a region-specific new TLD that … GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf. Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, … is application is not connected with or sponsored by the Council. .GCC does not purport to represent the Council. However, the term "GCC" has become commonly used to refer generally to the countries and people of the Gulf and Middle East region … not dissimilar to the development of the European Union which has been served for many years by the .eu domain."

This is clearly shows that the applicant is targeting the GCC community which basically covers the 6 member states of the GCC.

To our knowledge, the applicant did not consult the targeted community in regards to launch of the proposed TLD, its strategy and policies. The applicant did not obtain any endorsement from the GCC Secretariat General or any of its organizations, or any governmental or non-governmental organization within the GCC member states. The applicant did not present any endorsement or support letters in its application.

For the above reasons, the governments of Bahrain, Oman, Qatar and the UAE and the Gulf Cooperation Council would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application.

Possible Remediation steps for Applicant – This will be posted publicly:

The applicant should withdraw their application based on the information provided above

Further Notes from GAC Member(s) (Optional) – This will be posted publicly:

INFORMATION FOR APPLICANTS

About GAC Early Warning

The GAC Early Warning is a notice only. It is not a formalobjection, nor does it directly lead to a process that canresult in rejection of the application. However, a GAC EarlyWarning should be taken seriously as it raises the likelihoodthat the application could be the subject of GAC Adviceon New gTLDs or of a formal objection at a later stage in theprocess. Refer to section 1.1.2.4 of the Applicant Guidebook (http://newgtlds.icann.org/en/applicants/agb) for more information on GAC Early Warning.

Instructions if you receive the Early Warning

ICANN strongly encourages you work with relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning.

Asking questions about your GAC Early Warning

If you have questions or need clarification about your GAC Early Warning, please contact gacearlywarning@gac.icann.org.As highlighted above, ICANN strongly encourages you to contact gacearlywarning@gac.icann.org as soon as practicableregarding the issues identified in the Early Warning.

Continuing with your application

If you choose to continue with the application, then the "Applicant's Response" section below should be completed. In this section, you should notify the GAC of intended actions, including the expected completion date. This completed form should then be sent to gacearlywarning@gac.icann.org.If your remediation steps involve submitting requests for changes to your application, see the change request process at http://newgtlds.icann.org/en/applicants/customer-service/change-requests.

In the absence of a response, ICANN will continue to process the application as submitted.

Withdrawing your application

If you choose to withdraw your application within the 21-day window to be eligible for a refund of 80% of the evaluation fee (USD 148,000),please follow the withdrawal process published at http://newgtlds.icann.org/en/applicants/customer-service/withdrawal-refund. Note that an application can still be withdrawn after the 21-day time period; however, the available refund amount is reduced. See section 1.5 of the Applicant Guidebook.

For questions please contact: gacearlywarning@gac.icann.org

Applicant Response:

Ex. R-10

RESPONDENT'S EXHIBIT

LEGAL RIGHTS OBJECTION
WIPO Model Form
(Annex A to WIPO Rules for New gTLD Dispute Resolution)

This Legal Rights Objection model form must be used by parties wishing to file a Legal Rights Objection with the World Intellectual Property Organization Arbitration and Mediation Center ("WIPO Center") pursuant to the New gTLD Dispute Resolution Procedure ("Procedure"), provided as an Attachment to Module 3 of the gTLD Applicant Guidebook ("Applicant Guidebook") (v. 2012-01-11) approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on June 20, 2011 and as updated on January 11, 2012. The specific grounds on which a Legal Rights Objection may be filed are outlined in Applicant Guidebook Module 3, art. 3.5.2.

Upon filing, a copy of this Objection must be provided to the Applicant/Respondent and ICANN.

In accordance with the Applicant Guidebook and Procedure, the following information will be publicly posted on the WIPO Center's website:

(i) the proposed string to which the Objection is directed;
(ii) the names of the Objector and the Applicant/Respondent;
(iii) the grounds for the Objection; and
(iv) the date of the WIPO Center's receipt of the Objection.

By submitting this Objection to the WIPO Center the Objector hereby agrees to abide and be bound by the provisions of the Procedure and the World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections ("WIPO Rules for New gTLD Dispute Resolution") in effect on the day when the relevant Application for a new gTLD was submitted, pursuant to Procedure, art. 1(d).

Pursuant to Procedure, art. 5 all submissions made in connection with this Procedure must be made in English; parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

[In the event of any questions relating to the filing of a Legal Rights Objection under the Procedure, parties are invited to contact the WIPO Center by email at lro@wipo.int, or by telephone to +41 22 338 8247 or (toll free) 0800 888 549.]

Before the:

WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER

The Cooperation Council for the Arab States of the Gulf (GCC) *Also known as: Gulf Cooperation Council or GCC* **(Objector)** -v- GCCIX WLL **(Applicant/Respondent)**	**TLD string objected to: *[<.GCC>]***

_____

LEGAL RIGHTS OBJECTION

(Applicant Guidebook, Module 3; Procedure, art. 6, 7, 8;
WIPO Rules for New gTLD Dispute Resolution, para. 4)

I. Introduction

[1.] This Legal Rights Objection is hereby submitted to the World Intellectual Property Organization Arbitration and Mediation Center ("WIPO Center") for determination in accordance with the New gTLD Dispute Resolution Procedure ("Procedure"), provided as an Attachment to Module 3 of the gTLD Applicant Guidebook ("Applicant Guidebook") approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on June 20, 2011 and as updated on January 11, 2012, and the World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections ("WIPO Rules for New gTLD Dispute Resolution") in effect on the day when the relevant Application for a new gTLD was submitted.

II. The Parties

A. The Objector

(Procedure, art. 8(a)(i))

[2.] The Objector in this proceeding is the Cooperation Council for the Arab States of the Gulf also known as the Gulf Cooperation Council or GCC, an Intergovernmental Organization established in an agreement concluded in Abu Dhabi with Headquarters in Saudi Arabia.

[3.] The Objector's contact details are:

Address:	Gulf Cooperation Council Building, King Khaled Road, Diplomatic Area, 7153, Riyadh, Saudi Arabia
Phone:	+966 1-482-7777
E-mail:	gcctelec@batelco.com.bh
Fax:	+966 1-482-9089

[4.] The Objector's authorized representative in this proceeding is:

Name:	Talal Abu Ghazaleh Legal, an affiliate to Talal Abu Ghazaleh Organization.
Address:	A26 Smart Village, Km 28 Cairo/Alex DesertRoad P.O.Box: 150 Smart Village 12577, Egypt
Phone:	(+ 202) 35 35 2900
E-mail:	taglegal.egypt@tag-legal.com
Fax:	(+ 202) 35 37 0433

[5.] The Objector's preferred contact details for purposes of this proceeding are:

For electronic-only material

Method:	e-mail
Address:	taglegal.egypt@tag-legal.com
Contact:	Badr El-Dein Abdel Khalek

For any hardcopy* material

Method:	courier
Address:	A26 Smart Village, Km 28 Cairo/Alex DesertRoad, P.O.Box: 150 Smart Village 12577, Egypt
Fax:	(+ 202) 35 37 0433
Contact:	Badr El-Dein Abdel Khalek

B. The Applicant/Respondent

(Procedure, art. 11(d)(1))

[6.] The Applicant/Respondent in this proceeding is GCCIX WLL, a Bahraini LLC, incorporated in Bahrain with principal place of business in Manama, Bahrain. [Copies of the printout of the relevant ICANN posting conducted on March 13th, 2013 are provided as Annex [1].

[7.] All information known to the Objector regarding how to contact the Applicant/Respondent is as follows:

Address: NBB Tower, Government Avenue,20th Floor Manama, block 316, Bahrain.
Email: dotgcc@gccix.net/ gcc-app@sedari.com
Phone: +973 3331 0101 / +973 1655 7756 / +973 1655 7721
Fax: +973 1655 7701

III. TLD string objected to (applied-for TLD string):

(Procedure, art. 7, 8)

[8.] This Objection concerns the applied-for TLD string identified below:
[<.GCC>]

IV. Jurisdictional Basis for the Objection

(Procedure, art. 1(d), 4(b)(ii))

[9.] By applying for a new gTLD, the Applicant/Respondent has accepted the applicability of the Procedure and the WIPO Rules for New gTLD Dispute Resolution.

By filing the present Objection to a new gTLD, the Objector accepts the applicability of this Procedure and the WIPO Rules for New gTLD Dispute Resolution.

The parties cannot derogate from the Procedure without the express approval of ICANN and from the WIPO Rules for New gTLD Dispute Resolution without the express approval of the WIPO Center.

V. Factual and Legal Grounds

(Applicant Guidebook Module 3, art. 3.5.2; Procedure, art. 8)

[10.] The Objector's basis for standing under the Procedure is:
(Procedure, art. 8(a)(ii))

The objector in this proceedings is the Cooperation Council for the Arab States of the Gulf, known as the Gulf Cooperation Council or GCC.

The GCC is an intergovernmental organization representing a political and economic union between the Arab states bordering the Arabian Gulf namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. These member states are often referred to as the GCC countries.

The GCC was established in an agreement (Charter of the Co-operation Council for the Arab States of the Gulf) concluded on 25 May 1981 in Abu Dhabi. This charter is available on UN database of treaties with registration number I-21244 and UNTS volume 1288

- Information about the treaty available here:
  http://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e04ff

- English copy of the treaty is available at:
  http://treaties.un.org/doc/Publication/UNTS/Volume%201288/volume-1288-I-21244-English.pdf

The charter is available at the GCC website as well: http://www.gcc-sg.org/eng/indexfc7a.html

Article 4 of the Charter defines the Organization's mission which is to *"effect coordination, integration and inter-connection between Member States in all fields in order to achieve unity between them. To deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields. To formulate similar regulations in various fields including the following: economic and financial affairs, commerce, customs and communications, education and culture. To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; to establish scientific research; to establish joint ventures and encourage cooperation by the private sector for the good of their peoples".*

Moreover, the GCC satisfied Article 3.2.2.2 in the guidebook which entitles an **Intergovernmental Organization** to file a legal rights objection if it meets the criteria for registration of a .INT domain name, a condition which the GCC meets as:

a) It has been established through a treaty between national governments. This treaty is registered with the UN.

b) It is widely considered to have independent international legal personality subject to international law. The GCC has permanent headquarter (GCC Secretariat General) in Riyadh, Saudi Arabia.

c) The GCC has received a standing invitation to participate as observer in the sessions and the work of the UN General Assembly and maintaining permanent offices at Headquarters. The Office of the Permanent Observer for the GCC to the United Nations is located at 100 Park Avenue, Suite 1600, New York, N.Y. 10017, Telephone: (212) 880-6463.

[11.] This Objection is based on the following grounds:

(Procedure, art. 2(e), 8(a)(iii)(aa))

The applied for new gTLD string infringes the existing legal rights of the objecting IGO as recognized and enforceable under generally accepted and internationally recognized principles of law.

The framework for the protection of names and acronyms of international organization were set by the International legal instruments. The most important and relevant provision for the present review is contained in Article 6 ter of the Paris Convention for the protection of industrial property, entitled “Marks: Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations”.

It is stated in Article 6ter that “(1) (a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view. (b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, ***abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection”.***

Other key international legal norms of a particular relevance for the present review are:

Article 2 (1) of the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights, which states that "in respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967)".

Article 16 of the Trademark Law Treaty which stipulates that "Any Contracting Party shall register service marks and apply to such marks the provisions of the Paris Convention which concern trademarks".

Moreover, names of international organizations enjoy special protections in numerous national laws, in particular regarding trademark laws. Thus, the law stipulates that international organizations' names cannot be registered as trademarks. For instance:

In Saudi Arabia, the law of Trademarks of 7 August 2002 stipulates in its Article 2 that "The following signs, emblems, flags and others as listed below shall not be considered or registered as trademarks: Public emblems, flags and other signs, names or denominations pertaining to the Kingdom or pertaining to one of the countries with which it has reciprocal treatment or pertaining to one of the countries being a member of a multi-lateral international treaty in which the Kingdom is a party ***or pertaining to an international or governmental organization and also any imitation to these emblems, flags, symbols, names and denominations unless permitted by such owner".***

Further, Bahraini IP law grants protection to Arab and International Organizations against usage of their names, insignia, slogans, flags or armorial bearings against third party usage or registration as a trademark.

[12.] This Objection is valid and should be upheld for the following reasons:
(Applicant Guidebook, art. 3.5.2; Procedure, art. 8(a)(iii)(bb))

The applied for new gtld takes unfair advantage of the distinctive character and reputation of the objector IGO acronym as it creates an impermissible likelihood of confusion between the applied for gTLD and the objector's IGO acronym. This confusion may lead the internet users to think that the string enjoys the support or endorsement of the GCC union.

It is obvious that the applied for gTLD is similar in the appearance, phonetic sound and meaning to the acronym of the objecting IGO. This fact is proved by the numerous comments and disapproval that have been published in the public

comments webpage of the ICANN as well as the early warnings that have been directed by the GCC countries including Oman, Bahrain, Qatar, UAE and the GCC itself which has the historical rights over their acronym since the foundation of the union in 1981.

As recalled in the early warning and by the applicant itself, *"GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf. Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Its main objectives are to enhance coordination, integration and inter-connection between its members in different spheres. This application is not connected with or sponsored by the Council. GCC does not purport to represent the Council. However, the term 'GCC' has become commonly used to refer generally to the countries and people of the Gulf and Middle East region"*. The applicant's aforementioned statement proves that the applied for gTLD string explicitly targets the community of the Arab States of the Gulf, even if the applicant indicates that the application does not intend to represent the international organization itself.

Further, the applicant company is established in Bahrain, a country that has filed an early warning against the applied for string .GCC. Thus, the registration for the string should not be granted by the ICANN as it has been made without any endorsement from the GCC union and countries.

Whereas the internet is of continued growing importance as an indispensable tool used by major international organizations and institutions to communicate and promote their mission. The internet is undeniably the first source of information for people on those fundamental issues. Further, international (intergovernmental) organizations should be entitled to special protection, in particular regarding their communications tools. Thus, a misuse of the Internet as a communication tool, notably through the direct reference to the acronym of an international organization, will harm the causes advanced by these organizations.

In the light of international legal norms protecting the superior interests of Internet users. For the purpose of this evaluation, applications for a ".GCC" gTLD could raise problems with regards to international public order and legal norms of morality.

In the light of the above, it is reasonable to assume that the use and management of the acronym of an international organization, in this case the Gulf Cooperation Council, by the applicant explicitly targeting the GCC union without the endorsement from the said organization would create a likelihood of confusion with the objecting IGO's acronym as to the source, sponsorship, affiliation or endorsement of the TLD. could have adverse effects on the mission pursued by the organization. The launch of

the gTLD ".GCC" will definitely harm the causes defined in Article 4 of the Charter of the GCC. It will further unjustifiably impairs the distinctive character and the reputation of the Objector's IGO acronym impairing the organization itself from applying for this string.

VI. Panel (of Experts)

(Procedure, art. 13; WIPO Rules for New gTLD Dispute Resolution, para. 8)

[13.] The Objector elects to have the dispute decided by a single-member Panel.

VII. Other Legal Proceedings

[14.] N/A

VIII. Communications

(Procedure, art. 6(b), 7(b))

[15.] A copy of this Objection has been sent electronically to the pplicant/Respondent on *March 13th, 2013* by *email to the address* dotgcc@gccix.net , and to ICANN on *March 13th, 2013* by *email to the address newgtld@icann.org*

IX. Payment

(Procedure, art. 8(c); WIPO Rules for New gTLD Dispute Resolution, para. 10; Annex D to WIPO Rules for New gTLD Dispute Resolution)

[16.] As required by the Procedure and WIPO Rules for New gTLD Dispute Resolution, payment in the amount of USD 10,000 has been made by *Bank Transfer,* evidence of such payment is provided as Annex *[2]*.

By submitting this Objection, the Objector acknowledges and agrees that further payments may be required, e.g., in the event the parties elect Determination by a three-member Panel, or as may otherwise be provided in the Procedure and WIPO Rules for New gTLD Dispute Resolution.

X. Certification

(Procedure, art. 1(d) and 22;
WIPO Rules for New gTLD Dispute Resolution, para. 16)

[17.] The Objector understands and agrees that its claims and remedies concerning the application of the applied-for TLD, the instant Legal Rights Objection and the Determination thereof shall be solely against the Applicant/Respondent, and neither the Expert(s)/Panel(ists), nor WIPO Center and its staff, nor ICANN and

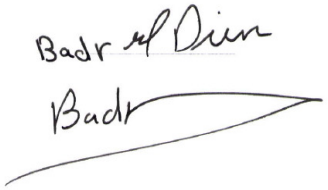
its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

[18.] By submitting this Objection to the WIPO Center the Objector hereby agrees to abide and be bound by the provisions of the applicable New gTLD Dispute Resolution Procedure and WIPO Rules for New gTLD Dispute Resolution.

[19.] The Objector certifies that the information contained in this Objection is to the best of the Objector's knowledge complete and accurate, that this Objection is not being presented for any improper purpose, such as to harass, and that the assertions in this Objection are warranted under the Procedure and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,

Badr El-Dein Abdel Khalek



March 13th, 2013

XI. Schedule of Annexes

Serial No.	Details
1	*Copies of the printout of the relevant ICANN posting for the string .GCC conducted on March 13th, 2013*
2	*Copy of the bank swift with the regard to the amount of USD 10,000.00*

Ex. R-11

RESPONDENT'S EXHIBIT

Governmental Advisory Committee

Beijing, People's Republic of China – 11 April 2013

GAC Communiqué – Beijing, People's Republic of China[1]

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and eight (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

II. Internal Matters

1. New Members and Observers

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

2. GAC Secretariat

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

[1] To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings and older GAC communiqués are available at: https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive.

3. GAC Leadership

The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

III. Inter-constituencies Activities

1. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board–GAC Recommendation Implementation Working Group (BGRI–WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI–WG intends to continue this discussion intersessionally and at its next meeting in Durban.

3. Brand Registry Group

The GAC met with the Brand Registry Group and received information on its origins, values and missions.

4. Law Enforcement

The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

***

The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board who jointly met with the GAC as well

as all those among the ICANN community who have contributed to the dialogue with the GAC in Beijing.

IV. GAC Advice to the ICANN Board[2]

1. New gTLDs

a. GAC Objections to Specific Applications

i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:[3].

1. The application for .africa (Application number 1-1165-42560)
2. The application for .gcc (application number: 1-1936-2101)

ii. With regard to Module 3.1 part II of the Applicant Guidebook[4]:

1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

b. Safeguard Advice for New gTLDs

To reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I).

c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

i. Consequently, **the GAC advises the ICANN Board** to: not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, . yun, .thai, .zulu, .wine, .vin

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[2] To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings

[3] Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

[4] Module 3.1: "The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

d. The GAC requests:

i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

e. Community Support for Applications

The GAC advises the Board:

i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

f. Singular and plural versions of the same string as a TLD

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

Therefore **the GAC advises the ICANN Board to:**

i. Reconsider its decision to allow singular and plural versions of the same strings.

g. Protections for Intergovernmental Organisations

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:**

i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

2. Registrar Accreditation Agreement (RAA)

Consistent with previous communications to the ICANN Board

a. **the GAC advises the ICANN Board that:**

i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

3. WHOIS

The GAC urges the ICANN Board to:

a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

4. International Olympic Committee and Red Cross /Red Crescent

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

5. Public Interest Commitments Specifications

The GAC requests:

b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

V. Next Meeting

The GAC will meet during the period of the 47th ICANN meeting in Durban, South Africa.

ANNEX I

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for**.**

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

Safeguards Applicable to all New gTLDs

The GAC Advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar's obligation to solicit accurate and complete information from the registrant.

2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.

3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.

5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.

6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Category 1

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:

    1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
    2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
    3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
    4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
  - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
  - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
  - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
  - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion,.insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
  - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
  - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
  - degree, .mba, .university
- **Intellectual Property**
  - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
  - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
  - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
  - .town, .city, .capital

- .reise, .reisen[5]
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
    - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
    - .fail, .gripe, .sucks, .wtf

The GAC further advises the Board:

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:

6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.

7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.

8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Category 2

<u>Restricted Registration Policies</u>

The GAC advises the ICANN Board:

1. **Restricted Access**
    - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

[5] Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

2. Exclusive Access

- For strings representing generic terms, exclusive registry access should serve a public interest goal.

  - In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access

    - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

ANNEX II

List of questions related to Public Interest Commitments Specifications

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?

2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?

3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?

4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?

5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?

6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?

7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?

8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?

Ex. R-12

RESPONDENT'S EXHIBIT

GAC Advice Response Form for Applicants

The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV, Annex I, and Annex II of the GAC Beijing Communique for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your CSC Portal with the Subject, "[Application ID] Response to GAC Advice" (for example "1-111-11111 Response to GAC Advice"). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

Respondent:

Applicant Name	GCCIX WLL
Application ID	1-1936-21010
Applied for TLD (string)	.GCC

Response:

As a preliminary matter, the GAC Advice is untimely and is therefore not legitimate. The Applicant Guidebook forms part of the legally binding agreement between ICANN and New gTLD applicants. The Guide Book clearly states in sections 1.1.2.7 and 3.1 that for the Board to be able to consider GAC Advice, it must be submitted "by the close of the Objection Filing period". That period concluded on 13th March 2013, yet GAC Advice was not communicated until 11th April 2013. We find it extraordinary that the ICANN Board and the New gTLD process would entertain such an untimely submission from any party.

Nevertheless, we are happy to explain how and why our application is legitimate and should be approved. Because we reject the GAC Advice as untimely, this response is submitted out of courtesy and not obligation; in responding, we reserve all rights in this matter.

Because the GAC Advice lacks any substance whatsoever with respect to our application, we have been in communication with Cherine Chalaby who advised "It is the ICANN Board New gTLD Program Committee's understanding that the GAC […] based on the rationale contained in the Early Warning has reached a consensus to object". Our response will be based on points 1 and 2 raised in the Early Warning that can be found here:
https://gacweb.icann.org/download/attachments/27131927/GCC-AE-21010.pdf

We note from the Early Warning that the CCASG was aware of our application as early as November 2012, and has filed an LRO based on their purported IGO acronym. The DRP allows for multiple LROs on multiple grounds, and the CCASG chose not to submit an LRO on the community objection ground although they obviously feel qualified to do so and could have done so. As there is a clearly defined process in place by which the

CCASG could have objected on these grounds, it surely cannot be appropriate to consider or uphold a complaint on the same grounds via the GAC and Board path. Obviously the ICANN Board has previously determined that WIPO is better qualified to assess such cases involving Legal Rights Objections. If the GAC and Board instead choose to consider this Objection, they are at risk of undermining themselves as well as the process they jointly laid down. At minimum, we should be given full opportunity to see the arguments presented against us, and to provide counterarguments; this of course is fundamental to all of the Objection processes created already by ICANN.

The CCASG, as an IGO with independent legal personality must be considered competent to defend its own interests. As a super-national entity, the CCASG should be considered as a higher power than any of its individual parts, and its own conscious actions in defending the rights it has should overrule GAC level action at the merely national level. While its member states are at liberty to lodge GAC level advice to the ICANN Board, this should only be considered at most as support to the actual actions undertaken by the IGO secretariat itself.

Therefore, as the CCASG has not raised a Community Objection, the Board and GAC should not consider that basis at all. As they have raised a Legal Rights Objection, at minimum a full and fair hearing of the matter should be had, ideally through the WIPO neutral panel as set forth in the Guidebook. If the GAC and Board chooses to supplement or surpass the findings of WIPO, they do so at great peril to their credibility and to the credibility of the entire new gTLD program.

Point 1 – IGO Name

The authors state "GCC is a known abbreviation for Gulf Cooperation Council. The GCC is a political and economic union…". This is manifestly untrue. The treaty cited establishes an entity given a completely different name, the Cooperation Council for the Arab States of the Gulf (hereinafter referred to as CCASG). The establishing treaty makes no reference to "Gulf Cooperation Council" or "GCC":

http://treaties.un.org/doc/Publication/UNTS/Volume%201288/volume-1288-I-21244-English.pdf

> ***Article One.*** **ESTABLISHMENT OF COUNCIL**
> A council shall be established hereby to be named the Cooperation Council for the Arab States of the Gulf, hereinafter referred to as Cooperation Council.

The authors state "…the GCC is […] an Intergovernmental Organization…". This is manifestly untrue. There is no valid citation to any authority or evidence to support this claim. There is no evidence of the legal existence of any purported legal entity with the name "GCC" and there is no evidence of the .GCC string having any internationally legally recognized link to the CCASG. Insofar as "GCC" does not exist in law, there is no basis for that acronym to benefit from protections afforded to legally recognized IGO names such as the CCASG.

The authors of the Early Warning state "[the GCC] meets the eligibility criteria for .int top level domain". This is manifestly untrue. While the CCASG might meet these criteria, the IANA policy for .INT name registration states this requirement (emphasis in original):

> *"The treaty submitted must establish the organization applying for the .int domain name. The organization must be* **established by the treaty itself***, not by a council decision or similar."*

As the purported entity "GCC" is itself not established by treaty, and the CCASG treaty makes no reference to "GCC" or "Gulf Cooperation Council", the string "GCC" clearly does not meet the eligibility criteria for the .int top level domain. This perhaps explains why the CCASG has never applied for nor been awarded such domain name from IANA.

The authors state "…the GCC has received a standing invitation to participate as an observer in the sessions and the work of the UN General Assembly". This is manifestly untrue. There is no reference to a "GCC" on the published list of United Nations Permanent Observers that is attached as Annex 1 hereto. Instead, the CCASG is listed under its only legal name, Cooperation Council for the Arab States of the Gulf.

The authors state "…in line with new gTLD program Applicant Guidebook provisions concerning protection of IGOs, the name 'GCC' should not be allowed to be registered as a gTLD…". As detailed above, there is no legally recognized IGO entity, including the CCASG, with any proven rights to the "GCC" string. Consequently, the string "GCC" cannot receive protections afforded to legitimate IGOs.

GCCIX WLL, however, can demonstrate rights to, and bona fide use of, the "GCC" string. Our company, GCCIX WLL, containing the string, is registered (CR #78805) with the Bahraini Ministry of Industry and Commerce since August 2011. GCCIX WLL own trademark registration number VR201300642 with the Danish Patent and Trademark office in classes 9,42,45.

Based on Toronto communiqué, the GAC issued further advice on the protection of names and acronyms of IGOs to the ICANN Board.
https://gacweb.icann.org/display/GACADV/2012-10-17-IGO
On 22nd March 2013 the GAC submitted agreed criteria, and a list of IGOs to the Board to support this advice. We do not understand on what basis the GAC included "Cooperation Council for the Arab States of the Gulf (GCC)" in that list, but it is immaterial in light of the accompanying criteria:

> Protection for the names and acronyms of the listed organizations shall be provided at the second level in all rounds of new gTLDs **and at the top level in all except the first new gTLD round**

It is obvious that GAC and the ICANN Board put a great deal of thought and effort into laying down the rules for the protection of legitimate IGO names and acronyms. We have demonstrated above that the ".GCC" string is not included in the protections offered under these rules, and that it is specifically excluded by the GAC from protection as an IGO name in this round of applications.

In spite of the above, our application is currently subject to a WIPO Legal Rights Objection on the grounds that it infringes on the rights of the CCASG. We note that the CCASG was party to the GAC Early Warning that is the sole basis of the GAC Advice submitted to the ICANN Board, and conclude that they shared their concerns via this path as well as via the LRO because of a lack of clarity around the formal process.

We prove in our Response to that Objection that 'GCC' is a geographically descriptive term referring to the entire Gulf Coast region much more than to the CCASG. Therefore we have a legitimate right to operate that TLD in accord with the terms of the Applicant Guidebook, and internet users in that region and abroad have the legitimate right to use such domain names to identify themselves. Expert analysis on this point is provided as Annex 2 hereto.

We do not believe that it is within the purview of the Board to elevate arbitrary strings to the status of IGO names, where no such rights previously existed in law or practice, and in doing so afford them the same protections as legally recognized IGOs. To do so would set a dangerous precedent, exposing ICANN to legal challenge, and undermine the genuine claims of legitimate IGOs.

As it is not the core competence of the ICANN Board to adjudicate cases of rights infringements, we suggest that it would be prudent for the Board to defer to the WIPO panel appointed to assess the ongoing LRO. The New gTLD process was well designed to allow for exactly the sort of challenge that our application has received, and the allegedly infringed party has found that process and invoked it. The GAC and the Board should respect and adhere to the process that they jointly defined.

In the event the ICANN Board will consider the legal rights issue at hand, GCCIX will provide its full Response to that objection, and all accompanying evidence, to the ICANN Board when it is completed next week.

Point 2 – Community support

The authors of the Early Warning state "the applicant is targeting the GCC community which basically covers the 6 member states of the GCC". As explained in great detail above, "GCC" is not a legal entity capable of having "member states".

The Applicant Guide Book discusses community gTLDs in section 1.2.3.1, where they are defined as being "…operated for the benefit of a clearly delineated community" and our application does not meet this criterion. We explained in our application that we perceive the "GCC" string as a "broad regional identifier", and we used explicit wording throughout to make it clear who we believe our target audience to be:

> "users in the Gulf and Middle East region" [In addition to CCASG members, the term "Middle East" includes Cyrus, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Palestine, Syria, Turkey, and Yemen]
>
> ".gcc will be marketed globally"
>
> "Internet users with an interest in or connection with the Gulf and Middle East"

> "the term GCC has become commonly used to refer generally to the countries and people of the Gulf and Middle East region"

The Guide Book states in 1.2.3.2 that:

> All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community based or declared the gTLD to be aimed at a particular community.

Our application attracted the attention of the Independent Objector who scrutinized it on various grounds, including the potential for a "Community Objection". In his final assessment, the IO did not see fit to object on community grounds. The IO clarified in his report:

"…it is the public policy of the IO not to make an objection when a single established institution representing and associated with the community having an interest in an objection can lodge such an objection directly"

and

"…the IO is of the opinion that the Gulf Cooperation Council is an established institution representing and associated with a significant part of the targeted community. The Gulf Cooperation Council is already fully aware of the controversial issues and is better placed than the IO to file an objection, if it deems it appropriate"

and

"…the [LRO based on infringement of IGO name or acronym] procedure is a significant opportunity given to the Gulf Cooperation Council to file an objection, if deemed appropriate, against the application"

In summary, the IO chose not to lodge a community objection because he found the CCASG qualified to do so, but then steered the CCASG away from an LRO on community objection grounds. The CCASG then decided against filing a Community Objection, and instead only filed a Legal Rights Objection. We conclude from this, and from the LRO submitted, that neither the IO nor the CCASG felt that a community objection could possibly be warranted. Certainly the GAC and the ICANN Board would not wish to second guess these determinations by the two best placed potential objectors.

Therefore, we request the Board to disavow the bare, unexplained GAC Advice with respect to our application, and instead to defer to the WIPO process that has been initiated by the CCASG. At minimum, the Board should seek full and detailed advice

from the GAC and then allow GCCIX the full opportunity to provide our informed response.

The use of GCC as an acronym in the context of the Gulf

Cross-border Information Ltd for GCCIX

16 October 2012

Overview

This research report demonstrates that the acronym GCC in the Gulf region has become separated from the Gulf Cooperation Council organisation and has become synonymous with the region made up of the members of this organisation. It shows that this general use of the GCC acronym is widespread and long established, and that the Council has not attempted to block or thwart organisations which have adopted its initials for their own purposes.

The report shows that GCCIX is far from being alone in having taken the GCC initials as part of the name that the company is registered under. We have also found numerous examples in which companies – regardless of where they are registered – have used the GCC initials as part of the branding for products and services aimed at a Gulf market. Not surprisingly, the use of GCC as a brand is most common in financial services and conferences where a regional identity is a strong selling point. In these cases it is obvious that the businesses in question are attempting to associate themselves and their products with the GCC region rather than with the Council as an institution or even as form of trans-national bureaucratic organisation. It is also clear that these businesses are not attempting to pass themselves off as being somehow formally linked to the organisation of the Council or its secretariat. There is no record of the GCC having ever objected to the use of the initials in this way.

The use of the GCC acronym in the media and by academics, consultants, analysts and think tanks as a regional geographical description is so widespread as to be impossible to quantify. There is a frequently occurring trend to use the GCC acronym on its own at first usage in an article when it is meant to refer to the region, and to use the full name of the Gulf Cooperation Council to introduce the organisation itself. This pattern clearly demonstrates that amongst analysts, journalists, editors and readers there is an established understanding that the initials GCC, on their own, no longer refer only to the Gulf Cooperation Council, as an organisation, but also refer to the region made up of its members. In fact, this trend is so common that it might be possible to argue that unless the Council is specifically referred to by its full name, a reference to GCC in a Gulf context is unlikely to be understood as indicating the institution rather than the region.

1. Use of GCC in company names

We have identified a number of companies based both in the Gulf region and outside it, which use the GCC acronym in their names in a way which is clearly meant to imply a focus on the member countries of the ***Gulf Cooperation Council***, but no specific link, relationship or cooperation with the Council itself. These companies appear to have been operating for many years without meeting any opposition or challenge to their use of the GCC initials in this way from the Council.

1.1 Fermacell GCC

Fermacell Gmbh's Gulf branch is registered as ***Fermacell GCC*** with the ***Dubai Chamber of Commerce*** and uses the web address www.fermacell-gcc.com. The company installs partitions, linings, west areas, flooring , ceilings and fire protection panelling.

1.2 ICDL GCC Foundation

The ICDL GCC Foundation is owned and run by ***The European Computer Driving Licence Foundation Ltd***, a not-for-profit organisation based in Dublin, **Ireland**. The foundation provides training in GCC countries and **Iraq** for people seeking to achieve the International Computer Driving Licence. It is not made explicit that GCC stands for ***Gulf Cooperation Council*** but it appears very likely that it is given the countries it serves. The foundation is partnered with the ministries of education of **Bahrain**, **Oman**, **Qatar**, **Saudi Arabia** (education authorities) and the **UAE** as well as other educational organisations but not the GCC.

The company website homepage states; *With hundreds of centres covering the GCC region and Iraq, you will surely find one near you*

1.3 Mars GCC FZE

The confectioner ***Mars Inc's*** Dubai based subsidiary in the Gulf is named ***Mars GCC*** and appears under that name in the Dubai Chamber of Commerce directory. The company was previously known as ***Master Foods Middle East***. The company was incorporated in 1993. It is not clear when it changed its name or whether this was the result of a takeover, although media reports begin to refer to Mars GCC rather than Master Foods in late 2007/early 2008. There are no references to Mars GCC in the Google News archives, the Mars website or Factiva before 2008. Blurb refers to "*Mars in the GCC*", another example of GCC used as a geographical reference term, as well as operating "*across all the GCC countries*".

1.4 VFS (GCC) (L.L.C)

A subsidiary of ***VFS. Global***, itself a wholly-owned subsidiary of ***Kuoni Group***, ***VFS (GCC) (L.L.C)*** uses the term GCC as a regional reference for its regional subsidiary in the UAE. The company is an outsourcing and technology services specialist working with embassies and governments around the world.

1.5 GCC Exchange

GCC Exchange was established by Rajesh Himmatlal and Mukesh Himatlal and registered with Companies House in the UK. The company set up its first outlet worldwide in Dubai in December 2005. It operates in the field of retail money transfer. Again it is not made explicit that GCC is an abbreviation of Gulf Cooperation Council but there is no reference to it being an acronym for anything else. It is registered as GCC Exchange and this appears to be its fully expanded name.

The company has a product called *GCC Remit* which is aimed expatriates. The product does not appear to be limited to GCC region expatriates and uses GCC as a brand name.

1.6 AGAS-Basil Technology Fund

The private equity fund's investment arm holding investments in GCC member states is called ***AGAS GCC Holding***. The company is registered with the ***Bahrain Chamber of Commerce***.

1.7 Green Cover

Oman registered MENA artificial turf specialist is listed as ***Green Cover GCC***. The company has distributors in Saudi Arabia, UAE, Qatar, Bahrain, Kuwait, **Yemen**, Iraq, **Syria**, **Egypt**, **Libya** and **Algeria**. As with many other companies it is not explicit what the GCC stands for, it is possible that it stands for Green Cover Company.

2. Use of GCC as a brand

The GCC acronym is widely used by a variety of corporations to promote their business activities in the Gulf region. In most cases this does not imply any connection to the Gulf Cooperation Council itself and rather a simple regional marketing focus on the countries which in the past used to be referred to as 'the Gulf monarchies'.

The Council appears to have been content over many years to allow its initials to be used by these organisations as a label to promote various products and services, without taking any steps to object to this usage or to apply legal or political pressure to limit this usage. Companies which have adopted GCC as a brand include both those with their origins outside the region and within it.

Finance

There are sufficient examples of the use of the term *GCC* in the names of financial products to suggest the term is used ubiquitously as a geographical descriptor in the sector. Some examples follow.

2.1 Saudi Fransi Capital

Saudi Fransi Capital managed ***Al-Qasr GCC Real Estate and Construction Equity Trading Fund*** is a fund investing in listed Sharia compliant real estate equities in GCC states. The fund began operating in April 2007

2.2 Global Investment House

Kuwaiti investment company listed in Kuwait, Dubai, Bahrain and on the ***London Stock Exchange*** also operates a number of closed-ended funds investing real estate in GCC countries. These are called ***Global GCC Real Estate Fund*** (launched 2005) and ***Global GCC Real Estate Fund II*** (launched in 2008), domiciled in Bahrain.

Global Investment House also manages a fund investing in large cap stocks listed "*on the GCC stock exchangesl*". This is called the ***Global GCC Large Cap Fund***. A third Gulf focussed fund investing in Sharia compliant stocks is called the ***Global GCC Islamic Fund***

2.3 Masraf Al Rayan

Masraf Al Rayan bank runs a Sharia compliant investment fund for Qatari investors called the ***Al Rayan GCC Fund***. The fund will invest in "*a select number of companies across the GCC*". According to the bank, "*The focus of the Fund is GCC equities which offer medium to longer value. However, the Fund can also invest in Shari'a-compliant GCC fixed income and money market instruments*"

2.4 Albilad Investment Company

Albilad Investment Company manages a fund investing in Sharia compliant real estate companies in the GCC. The fund is called the ***GCC Real-Estate Equity Fund (Aqaar)*** and was launched in July 2010. According to the company website "*the fund adopted a cautious investment strategy by diversifying risks through out the GCC's markets*".

2.5 Barwa Bank

Qatar's ***Barwa Bank*** established in July 2012 an open-ended collective investment scheme for Qatari nationals called ***The First Investor GCC Equity Opportunities Fund***. The fund invests in equities and equity-related securities of companies listed on stock exchanges "*within the Gulf cooperation Council (the "GCC") countries*". The fund is managed by ***The First Investor***

2.6 Gulf Investment Corporation

The ***Gulf Investment Corporation*** categorises its "*GCC region*" funds into a group of four funds known as the ***GCC Funds***.

Conferences
Conference organisers have been assiduous in using the GCC initials as a label to promote their regional focus on the countries belonging to the Council. But in many cases this does not imply any link to, or support from the Council itself. In most cases, while the activities of the Council as an organisation may be discussed – it is in fact the activities of national governments which are scrutinised at these events.

2.7 Gulf Research Center

The ***Gulf Research Center*** will hold the *GCC-Switzerland Forum* in September 2013. The event "*aims to assess the status quo of relations between Switzerland and the six GCC countries*". The Center was established in 2000 by Saudi businessman **Dr Abdulaziz Sager**. The organisation has offices in Geneva, Cambridge and Jeddah. It operates on an independent and not-for-profit basis.

2.8 Euromoney

London based financial market information company ***Euromoney*** organised a conference entitled "*The GCC Private Banking Conference*" in Manama, March 2012.

2.9 Middle East Association and City of London Corporation

The ***Middle East Association*** and ***City of London Corporation*** held the fourth annual "*City and GCC Countries Conference*" in London, the UK. The MEA is an independent UK-based trade body with offices in central London. It has no formal links to the Council and organises this and many other events for the benefit of its members and for paying subscribers without reference to the Council.

2.10 8th International Scientific Conference for Medical Students of the GCC countries

The *8th International Scientific Conference for Medical Students of the GCC countries* took place at ***Sultan Qaboos University*** in Muscat, Oman, in January 2012. Oman's Minister of Health **Dr Ahmed Bin Mohammed Al-Saeedi** attended, suggesting no objection from the government to the use of the term GCC.

2.11 Datamatix Group

Dubai based information technology and conference organiser ***Datamatix Group*** is a serial user of the term GCC when referring to member states both in its conference and award branding. Datamatix is associated with the ***GCC Global Competitiveness Development Institute***, which "*aims at becoming an internationally recognized quality management standard developer*". Ownership is not clear and we therefore cannot conclude that the organisation is definitely unaffiliated with the GCC.

Examples

- The company is leading the ***GCC 2015 eBusiness and Information Society*** project, which utilises the internet domain www.gccinfosociety.com. The project aims to congregate 1m GCC organisation and community websites to create a strong online business and information society
- The company is organising the ***GCC eTourism Development Conference*** in November 2012 in Dubai
- It is also holding the ***9th GCC Banking and Financial Markets Conference*** in November 2012 in Dubai
- ***2nd GCC Municipalities and Towns Planning Global Competitiveness Conference***, December 2012-10-12
- ***4th GCC Government Organization Websites Global Competitiveness Conference***, December 2012
- ***International Position's Challenges for (GCC) Nationals Conference***, December 2012
- ***2nd GCC Export and Re-Export Conference***, January 2013
- The company holds the *GCC Websites Excellence Awards*

Sport

In a number of cases, popular sporting events have taken the GCC label to indicate that participants are from GCC member states. But the Council itself does not have any direct affiliation with the promotion, sponsorship or organisation of the event.

We have attempted to be cautious about which events we include in this section of the report as the ***GCC General Secretariat of the National Olympic Committees*** may extend some kind of approval to certain sporting events which could be interpreted as a licence to use the initials as a label.

2.12 GCC Bowling Championships

There are a number of regional bowling competitions branded as *GCC Bowling Championships*. The Fourth GCC Bowling Championships for the hearing impaired took place in Bahrain earlier this year and was sponsored by the ***Bahrain Olympic Committee***, ***Ministry of Interior***, ***Ithmaar Bank***, ***Toyota***, ***Bahrain Petroleum Company***, ***Chevron***, ***Al Baraka Banking Group***, ***Bahrain Financing Company*** and ***Funland Bowling Centre***. The Council was not involved.

Other

2.13 World Travel Awards

World Travel Awards give awards to travel industry players each year, including the *GCC's Leading Travel Management Company* award, in 2012 given to ***Abu Dhabi Travel Bureau***. GCC is clearly being used here to refer to the geographical region in which travel companies are operating, rather than GCC as an organisation. WTA was established in 1993 by **Graham E. Cooke** and is based in London. The organisation's main sponsors in 2011 were ***BBC World News***, the ***Jamaica Tourist Board***, ***Emaar Hotels & Resorts***, ***Armani Hotel Dubai***, ***Sandals Resorts***, ***Tourism Authority of Thailand*** and ***WeClick Media***. Its media partners are ***International Herald Tribune***, ***CNBC Arabiya***, ***National Geographic Traveller***, ***eTurboNews***, ***Breaking Travel News***, ***Khaleej Times***, ***Trav Talk***, ***Trade Arabia***, ***TTN***, ***Travel Daily News***, ***Focus on Travel News***, ***Travel Daily News***, ***Publituris***, ***Passport Magazine***, ***Travel & Leisure China*** and ***Xenios World***. WTA has no known affiliation to the GCC.

2.14 CPI Financial

Dubai based financial news and information company ***CPI Financial*** holds annual *Islamic Business & Finance Awards 2012*, established in 2005. Many of the awards use the term GCC as a geographical descriptor, restricting candidates to institutions based in GCC member states.

Examples include:

- Best Islamic Wholesale Bank – GCC
- Best Islamic Investment Bank - GCC
- Best Islamic Retail Bank - GCC
- Best Takaful Operator - GCC
- Best Islamic Wholesale Bank - MENA non-GCC
- Best Islamic Retail Bank - MENA non-GCC
- Best Takaful Operator - MENA non-GCC

3 Media and Entertainment

Media organisations of all sizes and localities are regularly using the term GCC to refer to the member states rather than the Council itself. Incidents of this type of usage are so common that it is only possible to present a very small illustrative sample from the most popular media outlets. The corporate and brand examples listed above present more concrete and formal examples of how the acronym has ceased to be the exclusive preserve of the Council, and also provide examples of cases when the Council had a realistic opportunity to object. By contrast, the following media examples demonstrate how in the general public understanding – not just of the Gulf itself – but also globally –

GCC is no longer a term which exclusively refers to the Council which bears the initials. In fact it is in a minority of cases that initials are used to refer to the actual organisation. It is notable that unlike the EU and the IMF whose initials are synonymous with the organisation and which many news organisations use without spelling out the name in full, the Gulf Cooperation Council is almost always referred to by its full name at the start of any article which deals with it specifically. Conversely, when GCC is used on its own, the implication is that the region or collection of member states is being referred to and specifically not the actual organisation.

News outlets
The GCC acronym has been adopted widely by media – especially media based in the Gulf region itself, but also global media to some extent, as a synonym for the Gulf States who are members of the Council. It is worth focusing on the detail of journalistic style to understand the full significance of this point. There are some major global news organisations such as Reuters and the BBC which may use the GCC acronym on its own in a headline, but invariably spell out the Council's full name the first time that the acronym is used in the full text of the article. These organisations often also follow this first use of the acronym with a list of the member countries. They, however, are the exception and are catering for a global audience which is not necessarily familiar with the Gulf region.

The vast majority of news organisations which are focused on reporting of the Gulf and Gulf affairs not only use GCC in the headlines of news articles to refer to the region rather than to the Council itself, but also frequently use the GCC acronym in the main text of articles without any reference to the Council at all. By contrast, when these organisations wish to refer specifically to the Council it is almost always refer to by its full name on first mention and sometimes even refer to it by its full formal name of ***Co-operation Council for the Arab States of the Gulf*** . This clearly demonstrates that in public and popular understanding, the GCC initials now carry their own separate meaning related to the wider region and not to the Council itself.

3.1 Zawya
Like many media outlets, Zawya frequently uses GCC as term referring to a region, rather than the Council.

10 October 2012 "*The **GCC** market is unique in structure…*"
- http://www.zawya.com/story/GCC_market_lucrative_for_Indian_advertisers-GN_10102012_111041/

3.3 Al Bawaba News
Large Oman based internet publisher

*"The **GCC** hospitality sector is poised for healthy growth owing to favourable economic conditions, infrastructure development, increased bids to host high-profile global events and government support to the private sector."*
http://www.albawaba.com/business/gcc-hospitality-set-grow-445474

*"In remarks at the end of a meeting of **Gulf Cooperation Council** and EU foreign ministers in the Spanish city of Granada…"*
- http://www.albawaba.com/news/uae-iran-makes-attempts-change-demographics-occupied-islands

3.4 Gulf News
Dubai based English language ***Gulf News*** with an average daily circulation of more than 100,000 on Thursdays and Sundays in 2011.

"*The **GCC** market is unique in structure…"*

- http://gulfnews.com/business/technology/gcc-market-lucrative-for-indian-advertisers-1.1087619

*"Six members of the current Australian squad, including Brosque, are playing in the **GCC** region"*
- http://gulfnews.com/sport/football/brosque-makes-a-strong-case-for-gcc-clubs-1.1087424

"*Challenge of entrepreneurship in **GCC***"
"*This shows that small firms in **GCC** are relatively inefficient*"
- http://gulfnews.com/opinions/columnists/challenge-of-entrepreneurship-in-gcc-1.1087111

"*The seventh consultative summit of the **Gulf Cooperation Council** is set to begin*."
- http://gulfnews.com/news/gulf/saudi-arabia/gcc-summit-begins-today-1.289140

3.5 Gulf Times

"*Qatar bourse on track for listing by **GCC** firms – The Qatar Exchange is on track to witness the advent of listed companies from other Gulf countries and allow securities lending and borrowing (SLAB) as part of attracting more foreign investments. "We are in discussion with a number of **GCC**-listed companies who are actively working toward listing here in Qatar," Qatar Exchange's newly appointed CEO Rashid bin Ali al-Mansoori told the Meed Qatar Banking Summit*."
- http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=536099&version=1&template_id=48&parent_id=28

*"International Monetary Fund (IMF) Managing Director Christine Lagarde (centre) with Bahrain's finance minister Ahmed bin Mohammed al-Khalifa (left) and Saudi Arabia's finance minister Ibrahim al-Assaf before the **Gulf Cooperation Council (GCC)** finance ministers meeting in Riyadh recently."*
- http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=536415&version=1&template_id=48&parent_id=28

3.6 Oman Daily Observer

Oman based daily newspaper

*"There is no doubt that millions of expatriates flock to **GCC** countries…"*
- http://main.omanobserver.om/node/113863

"*Dr Bakhit al Mahri, Member of the Majlis Addawla and Educational Director at the **Co-operation Council for the Arab States of the Gulf** Secretariat General…"*
- http://main.omanobserver.om/node/101211

3.7 Middle East Economic Digest

Specialist regional publication

"*Most of the major airports in the **GCC** are reporting increases of between 10-20 per cent in year-to-date passenger numbers*."
- http://www.meed.com/tenders-and-contracts/sectors/transport/gcc-airport-passenger-traffic-rises/3153917.article

"*Countries still need to ratify **Gulf Co-operation Council** proposals*"
"*The parliament's foreign affairs committee approved the **Gulf Co-operation Council's** proposals for a single currency*."
- http://www.meed.com/sectors/economy/government/kuwait-approves-gulf-monetary-union/3000687.article

3.8 Dubai Chronicle
Privately owned online publication founded in 2007.

"*The development is particularly targeted at **GCC**, Chinese and Russian investors*."
- http://www.dubaichronicle.com/2012/09/16/emaar-serviced-residences-downtown-dubai/

*"His Excellency Eng. Sultan Bin Saeed Al Mansoori, UAE Minister of Economy, today inaugurated the 21st meeting of the **Gulf Co-operation Council (GCC)** Committee of Ministers of Planning and Development…"*
- http://www.dubaichronicle.com/2011/06/01/gcc-ministers-of-planning-development-address-region%E2%80%99s-concerns-and-growth/

3.9 Emirates 24/7
UAE based online publication

"*Emami International, the Dubai-based subsidiary of the $450 million (Dh1.65 billion) Indian business entity, Emami Group, said the **GCC** market for men's face care was growing at 37 per cent*"

- http://www.emirates247.com/eb247/companies-markets/markets/men-s-face-care-market-grows-at-37-in-gcc-2010-05-18-1.245296

*"Mohammed Al Jasser, Governor of the Saudi Arabian Monetary Agency (Sama), is the most likely candidate to chair the board of the future central bank of the **Gulf Co-operation Council**, Asharq Al Awsat reported yesterday, citing officials."*
- http://www.emirates247.com/eb247/economy/regional-economy/sama-governor-likley-to-chair-gcc-central-bank-2010-03-21-1.70786

3.10 Gulf Daily News
Bahrain based daily newspaper

"***GCC** countries represent a market worth more than $1 trillion to foreign investors*".
- http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=338451

"*We have confronted them with determination through unified positions reflected in the pioneering role of the **Gulf Co-operation Council** and we seek with the help of God to strengthen the unity between its member states*." His Majesty King Hamad Al-Khalifa
- http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=339751

3.11 Arab Finance
ArabFinance.com is an online provider of financial information as well as financial services.

"*Despite concerns over hotel room oversupply as well as political risks in some destinations in the **GCC**, outlook for the six-nation bloc's hotel sector remains highly positive*."
- https://www.arabfinance.com/News/newsdetails.aspx?Id=226329

3.12 Travel and Tourism News Middle East
Part of the ***Al Hilal Publishing and Marketing Group***

"***GCC** gets first green tour company*"
"*…our fresh concept of travel throughout the GCC region…*"
- http://ttnworldwide.com/articles.aspx?ID=1654&artID=11601

Books

Well known publishers from Europe and the **United States** have frequently published books which are titled using the term GCC to refer specifically to member states or characteristics, institutions or individuals residing in member states.

Examples include:

3.16 Schriften zur Gesundheitsökonomie

Schriften zur Gesundheitsökonomie have published a book called, *Managed Equipment Services as a Conceptual Business Opportunity Model for the **GCC** with focus on UAE: An Institutional an Economic Analysis*. The book was written by **Michael J. Kloep** and was published November 2011

3.17 Wiley Finance

In April 2013 publisher ***Wiley*** subdivision ***Wiley Finance*** intends to publish a book by **Abdul Rahman Khalil Tolefat** and **Mehmet Asutay** entitled *Takaful Investment Portfolios: A Study of the Composition of Takaful Funds in the **GCC** and Malaysia*.

3.18 Routledge Advances in Middle East and Islamic Studies

Routledge division ***Routledge Advances in Middle East and Islamic Studies*** is planning on publishing a book called *Higher Education in the Gulf: Revolution in **GCC** Institutions* by **Fatima Badry** and **John Willoughby** in January 2014.

3.19 Springer Science and Business Media New York

Springer unit ***Springer Science and Business Media New York*** published the book *The **GCC** Economies: Stepping Up To Future Challenges* edited by **Mohamed A. Ramady** in April 2012.

3.20 VDM Verlag Dr. Müller

The book *Arab **GCC** Banking: Measurement of Competition* by **Saeed Al-Muharrami** was published in March 2010 by ***VDM Verlag Dr. Müller***.

3.21 ICON Group International Inc

ICON Group International Inc published ***GCC**: Webster's Timeline History, 1876 – 2007*, edited by Professor **Phillip M. Parker**, in March 2010.

4 Use of GCC as a geographical term

A large number of the most authoritative organisations which analyse and report on the Gulf region use GCC as a regional geographical term rather than a term indicating the actual institution. The fact that this understanding has been adopted by organisations such as the Royal Institute for International Affairs (Chatham House), the UK Government, the IMF, World Bank, Gulf Research Centre and other respected bodies shows the extent to which the independent usage of GCC as a term has been established and accepted in a way that can only be described as authoritative.

4.1 Chatham House

Chatham House is currently running a project in its Middle East and North Africa unit entitled "*Future Trends in the GCC*". GCC here refers to the geographical area defined as the member states of the Gulf Cooperation Council but has no relation to the GCC as an organisation. GCC has broadly been substituted for what might in previous decades have been called the Gulf monarchies.

An example of use of the term GCC in the project can be seen in the transcript from two Chatham House workshops which took place in May 2012 - *Identities and Islamisms in the GCC* and *Political and Economic Scenarios for the GCC*. The term is consistently used as a geographical label.

Examples from *Identities and Islamisms in the GCC*:

- *Changing dynamics in the wider Middle East region are bound to have an impact on the GCC states. The perceived success or failure of the Egyptian transition will affect views of both democracy and political Islam in the GCC*, pp2
- *Sectarian tensions are being fuelled by inter-state competition. They also reflect socio-economic cleavages, being more pronounced in Bahrain and Saudi Arabia than in the other GCC countries where socio-economic differences are less manifest*, pp2
- *GCC governments*, pp4

http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/0512gcc_summary.pdf

Examples from *Political and Economic Scenarios for the GCC* are clearer still:

- *Longstanding efforts to diversify the GCC economies away from oil*, pp2
- *Yet the nature of citizenship in the GCC is also shaped by the political economy of the GCC countries*, pp3
- *However, this growth was almost exclusively driven by dramatic increases in state spending, which have been a continuous feature of GCC economic policy*, pp4

Here the term is clearly used in a manner completely removed from the Gulf Cooperation Council. It refers to GCC economic policy, for example, in a way in which the author appears to have assumed it self-evident that this refers to the economic policy of member states of the GCC, rather than the policy of the council.

http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/0512gcc_summarytwo.pdf

4.2 Alpen Capital

Alpen Capital, a GCC and Asia focussed investment bank, produces research reports on economic trends in GCC states. These use the term GCC as an indicator of an economic entity unrelated to the Gulf Cooperation Council. See for example the company's March 2012 report, *GCC Construction Industry*

This is emphasised by turns of phrase such as;

- *growth is also not uniform across all regions within the GCC*, pp6
- *GCC region continues to enjoy premium on rental yields*, pp6
- *The GCC, which is home to more than 16 million expatriates from around the world with strong aspirations and preferences for their own homes, is likely to drive the housing demand across the region*, pp7

http://www.alpencapital.com/downloads/GCC%20Construction%20Sector%20Report%20-%2027%20March%202012.pdf

Other private companies use the term GCC in a similar context in their research documents, see for example ***Markaz*** subsidiary ***Marmore*** (www.e-marmore.com), ***Ventures Middle East*** (www.indexexhibition.com/files/gcc_hospitality_sector__may_2011.pdf) or ***A. T. Kearney*** (http://www.atkearney.ae/index.php/News/gcc-banks-may-see-wave-of-mergers-and-acquisitions.html)

4.3 The World Bank

The World Bank refers to the GCC as a geographical region in its December 2010 report on "Investment Funds in MENA".

Examples include;

- *At present, GCC investors are able to access real estate investments only with difficulty and considerable risk*, pp7
- *A GCC-only analysis finds that GCC-domiciled investment funds that invest in the GCC account for just 1.7 percent of GCC total stock market capitalization*, pp8
- *There is also wide variance within the GCC*, pp9

http://siteresources.worldbank.org/INTMNAREGTOPPOVRED/Resources/MENAFlagshipMutualFund2_28_11.pdf

4.4 The International Monetary Fund

The IMF has also produced reports using the term GCC as a geographical descriptor. Consider the April 2010 working paper, "*The GCC Banking Sector: Topography and Analysis*". This is made more or less explicit in the opening statements, "*In this paper, we analyze the evolution of the Gulf Cooperation Council (GCC) banking sectors in the six member countries*".

The term is used like this throughout the paper. Some examples include;

- Chapter headings such as, "*Structure of the GCC Financial System*" and "*GCC Banking Sector Balance Sheets: Stylized Facts*"
- *capital inflows to the GCC region*, pp4
- *Section I describes the structure of the financial sector, including cross-border ownership within the GCC*, pp4

http://www.imf.org/external/pubs/ft/wp/2010/wp1087.pdf

4.5 Gulf Research Centre

The ***Gulf Research Centre Cambridge***, a branch of the Dr Abdulaziz Sager's Gulf Research Center (above), inaugurated the ***Gulf Research Meeting*** in July 2012. The keynote speech at the inauguration was given by Major General Dr **Abdul Latef Bin Rashid Al-Zayani**, Secretary General of the Gulf Cooperation Council. Two workshops at the first Meeting were titled using GCC as a regional descriptor; *The Arab Spring: Impacts and Consequences on the GCC* and *Socio-economic Impacts of GCC Migration*. It is clear from the texts of both workshops that GCC refers to Gulf states, rather than the Council.

4.6 Economist Intelligence Unit

In March 2009 the research company ***The Economist Intelligence Unit*** published a report called *The GCC in 2020 Outlook for the Gulf and the Global Economy*. The report was sponsored by the ***Qatar Investment Centre***.

Examples of the use of the term GCC in the report:

- *Over the past ten to 12 years, the Gulf Co-operation Council (GCC) region, which comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, has undergone rapid economic, demographic and social changes*, pp2
- *In the first report, we look at the role that the GCC will play in the global economy*, pp2
- *As US economic growth has slowed, GCC investors have begun to diversify their assets more widely*, pp2

http://graphics.eiu.com/marketing/pdf/Gulf2020.pdf

EIU reports utilising similar use of the term:

- http://graphics.eiu.com/upload/eb/GCC_Trade_and_Investment_Flows_Falcon%20South_Web_22_MARCH_2011.pdf
- http://graphics.eiu.com/upload/eb/GCC_in_2020_Resources_WEB.pdf
  http://graphics.eiu.com/upload/eb/Gulf2020part2.pdf

4.7 Institute of International Finance

Global association of financial institutions, the IIF regularly produces research reports for its members. One of these, GCC: Regional Briefing from 2008, frequently refers to the 'GCC' in reference to the member states or institutions residing in the member states.

Examples of use of the term GCC:

- *GCC banks have remained well capitalized and profitable*
- *Risks to the GCC region have risen, but are likely to be contained*
- *GCC Outlook: Baseline and Low-Case Scenarios*

www.iif.com/download.php?id=L/hOjB87aN4

4.8 UK Foreign and Commonwealth Office

UK government department - Note from the British Embassy in Abu Dhabi

"*Food and water security is a serious issue in the Gulf. The Gulf States rely on desalination for much of their water supply and import a high proportion of their food. Benefits could be reaped from a regional approach. Food and water security is a major issue for the GCC countries*."

http://www.ukti.gov.uk/export/countries/asiapacific/middleeast/saudiarabia/premiumcontent/355240.html

Conclusion

As the numerous examples cited in this report demonstrate, the GCC acronym is widely used by companies, financiers, conference organisers, journalists, analysts, academics and officials to refer to the region comprised of the six countries that are members of the Gulf Cooperation Council. When the initials are used in this way, they are not meant to refer to the Council as an institution or body itself. The term GCC is of course also used in a wide variety of contexts to refer to the Council or its associate bodies and policies. But very often the full name of the Council is included in order to avoid ambiguity. The existence of such a broad range of examples of the acronym GCC being used as a purely region term is the foundation of our conclusion that the initials no longer refer exclusively to the Council and its activities in a Gulf context.

In all the examples that we have cited, perhaps most relevantly in the commercial and corporate examples at the start of the report, there is no evidence that the Gulf Cooperation Council has ever attempted to claim an exclusive right to use its initials – nor that it has ever taken steps to prevent independent commercial organisations for adopting the initials as part of their corporate identity or brand marketing. There is also no suggestion that the businesses which have adopted the GCC identity in the ways described are in any sense attempting to pass themselves off as being affiliated to the Gulf Cooperation Council or its related bodies. Public understanding appears to be well used to the idea that the GCC label indicates a regional focus rather than any organisational attachment.

These findings based on an empirical study of the way that the GCC acronym is used across the public sphere are the basis for our conclusion that the term is no longer the exclusive preserve of the body that originated it.

About the author

The lead editor of this report is John Hamilton, a director at Cross-border Information (CbI) and a contributing editor of the respected Middle East-focused fortnightly Gulf States Newsletter (GSN).

CbI is a business intelligence and consultancy company that tracks people, politics and business across Africa and the Middle East. We undertake due diligence and corporate intelligence investigations and provide consultancy services through written reports, confidential briefings and interactive seminars. Our staff expertise is backed by an extensive network of local sources and the CbI Archive - a proprietary database providing corporate clients with over three decades of valuable intelligence on a subscription or search-and-buy basis.

GSN is CbI's Gulf-focused political risk consultancy and business information portal. It has been producing fortnightly analysis of the Gulf region since 1974.

http://www.crossborderinformation.com/

http://www.gsn-online.com/

Cross-border Information, 16 October 2012

Permanent Observers

Intergovernmental organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters

- **African Union**

- Office of the Permanent Observer for the African Union to the United Nations
  3 Dag Hammarskjöld Plaza, 305 East 47th Street, 5th Floor, New York, NY 10017
  Telephone: (212) 319-5490

- **Asian-African Legal Consultative Organization**

- Office of the Permanent Observer of the Asian-African Legal Consultative Organization to the United Nations
  404 East 66th Street, Apt. 12C, New York, NY 10065
  Telephone: (212) 734-7608

- **Caribbean Community (CARICOM)**

- Office of the Permanent Observer for the Caribbean Community (CARICOM)
  88 Burnett Avenue, Maplewood, NJ 07040
  Telephone: (973) 378-9333

- **Central American Integration System**

- Office of the Permanent Observer for the Central American Integration System to the United Nations
  211 East 43rd Street, Suite 701, New York, NY 10017
  Telephone: (212) 682 1550, 874-3042

- **Commonwealth Secretariat**

- Office of the Commonwealth Secretariat at the United Nations
  800 Second Avenue, 4th floor, New York, NY 10017
  Telephone: (212) 599-6190, 682-3658, 338-9410

- **Cooperation Council for the Arab States of the Gulf**

- Office of the Permanent Observer for the Cooperation Council for the Arab States of the Gulf to the United Nations
  100 Park Avenue, Suite 1600
  New York, NY 10017

Telephone: (212) 880-6463

European Union

- Delegation of the European Union to the United Nations
  222 East 41st Street, 20th Floor, New York, NY 10017
  Telephone: (212) 371-3804

- **International Criminal Court**

- Liaison Office of the International Criminal Court to the United Nations
  866 United Nations Plaza, Suite 476
  New York, NY 10017
  Telephone: (212) 486-1362/1347

- **International Criminal Police Organization (INTERPOL)**

- Office of the Special Representative for the International Criminal Police Organization (INTERPOL) to the United Nations
  One United Nations Plaza, Room 2610, New York, NY 10017
  Telephone: (917) 367-3463

- **International Development Law Organization**

- Office of the Permanent Observer for the International Development Law Organization to the United Nations
  Uganda House
  336 East 45th Street, 1st Floor
  New York, NY 10017
  Telephone: (212) 867-9707 (Office)
  (646) 229-0936 (Cellular)

- **International Institute for Democracy and Electoral Assistance**

- Office of the Permanent Observer for the International Institute for Democracy and Electoral Assistance to the United Nations
  336 East 45th Street, 14th Floor, New York, NY 10017.
  Telephone (212)-286-1084

- **International Organization for Migration**

- Office of the Permanent Observer for the International Organization for Migration to the United Nations
  122 East 42nd Street, Suite 1610, New York, NY 10168
  Telephone: (212) 681-7000, Ext. 200

- **International Organization of la Francophonie**

- Office of the Permanent Observer for the International Organization of la Francophonie to the United Nations
  801 Second Avenue, Suite 605, New York, NY 10017
  Telephone: (212) 867-6771

- **International Renewable Energy Agency**

- Office of the Permanent Observer for the International Renewable Energy Agency to the United Nations
  Uganda House
  336 East 45th Street, 11th Floor
  New York, N.Y. 10017
  Telephone: (212) 867-9707

- **International Seabed Authority**

- Office of the Permanent Observer for the International Seabed Authority to the United Nations
  One United Nations Plaza, Room 1140, New York, NY 10017
  Telephone: (212) 963-6470/6411

- **International Tribunal for the Law of the Sea**

- Office of the Permanent Observer for the International Tribunal for the Law of the Sea to the United Nations
  Two United Nations Plaza, Room 434, New York, NY 10017
  Telephone: (212) 963-3972

- **International Union for the Conservation of Nature and Natural Resources**

- Office of the Permanent Observer for the International Union for the Conservation of Nature and Natural Resources to the United Nations
  801 Second Avenue, Suite 405 New York, NY 10017
  Telephone: (212) 286-1076

- **League of Arab States**

- Office of the Permanent Observer for the League of Arab States to the United Nations
  866 United Nations Plaza, Suite 494, New York, NY 10017
  Telephone: (212) 838-8700

- **Organization of Islamic Cooperation**

- Office of the Permanent Observer for the Organization of Islamic Cooperation to the United Nations
  320 East 51st Street

Telephone: (212) 883-0140

- **Partners in Population and Development**

- Office of the Permanent Observer for Partners in Population and Development to the United Nations
  336 East 45th Street, 14th Floor, New York, NY 10017
  Telephone (212)-286-1082

- **University for Peace**

- Office of the Permanent Observer for the University for Peace
  551 Fifth Avenue, Suites 800 A-B
  New York, N.Y. 10176
  Telephone: (212) 346-1163

Intergovernmental organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and not maintaining permanent offices at Headquarters

- African, Caribbean and Pacific Group of States
- African Development Bank
- Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
- Andean Community
- Andean Development Corporation
- Asian Development Bank
- Association of Caribbean States
- Association of Southeast Asian Nations
- Black Sea Economic Cooperation Organization
- Central European Initiative
- Collective Security Treaty Organization
- Common Fund for Commodities
- Commonwealth of Independent States
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- Conference on Interaction and Confidence-building Measures in Asia
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- East African Community
- Economic Community of Central African States

- Economic Community of West African States
- Economic Cooperation Organization
- Energy Charter Conference
- Eurasian Development Bank
- Eurasian Economic Community
- European Organization for Nuclear Research
- Global Fund to Fight AIDS, Tuberculosis and Malaria
- GUUAM
- Hague Conference on Private International Law
- Ibero-American Conference
- Indian Ocean Commission
- Inter-American Development Bank
- Intergovernmental Authority on Development
- International Centre for Migration Policy Development
- International Conference on the Great Lakes Region of Africa
- International Fund for Saving the Aral Sea
- International Humanitarian Fact-Finding Commission
- International Hydrographic Organization
- Islamic Development Bank Group
- Italian-Latin American Institute
- Latin American Economic System
- Latin American Integration Association
- Latin American Parliament
- OPEC Fund for International Development
- Organization for Economic Cooperation and Development
- Organization for Security and Cooperation in Europe
- Organization of American States
- Organization of Eastern Caribbean States
- Pacific Islands Forum
- Parliamentary Assembly of the Mediterranean
- Permanent Court of Arbitration
- Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States
- Shanghai Cooperation Organization
- South Asian Association for Regional Cooperation
- Southern African Development Community

- South Centre
- Union of South American Nations
- West African Economic and Monetary Union

Other entities having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters

- **International Committee of the Red Cross**

- Delegation of the International Committee of the Red Cross to the United Nations
  801 Second Avenue,
  18th Floor,
  New York, NY 10017-4706
  Telephone: (212) 599-6021

- **International Federation of Red Cross and Red Crescent Societies**

- Delegation of the International Federation of Red Cross and Red Crescent Societies to the United Nations
  800 Second Avenue,
  Suite 355 (Third Floor)
  New York, NY 10017
  Telephone: (212) 338-0161

- **International Olympic Committee**

- Office of the Permanent Observer for the International Olympic Committee to the United Nations
  708 Third Avenue, 6th Floor New York, NY 10017
  Telephone: (212) 209 3952

- **Inter-Parliamentary Union**

- Office of the Permanent Observer to the United Nations
  220 East 42nd Street, Suite 3002, New York, NY 10017
  Telephone: (212) 557-5880

- **Sovereign Military Order of Malta**

- Office of the Permanent Observer for the Sovereign Military Order of Malta to the United Nations
  216 East 47th Street,
  8th Floor,
  New York, NY 10017
  Telephone: (212) 355-6213/4601

Based on the United Nations Protocol's Blue Book
Last updated from A/INF/67/5 (26 December 2012)

Ex. R-13

RESPONDENT'S EXHIBIT

The Internet Corporation for Assigned Names and Numbers

ICANN

May 10, 2013

Heather Dryden

Chair, Governmental Advisory Committee

Re: New gTLD Program Committee Progress in Addressing GAC Beijing Advice

Dear Heather,

On behalf of the New gTLD Program Committee (NGPC), I wanted to provide you with an update on its progress in consideration of the Governmental Advisory Committee's Beijing advice and what steps are still to be taken.

The NGPC met on 8 May to consider a Plan for responding to the GAC's advice on New gTLDs, transmitted to the Board through its 11 April Beijing Communiqué. The Plan is in two parts. Part 1 shown below consists of actions for soliciting input from Applicants and from the Community:

	Item	Resp.	Start Date	Compl. Date	Status
1	Publish GAC Communiqué and notify applicants of 21-day GAC Advice Response Period	Staff		18 April	Complete
2	Applicants 21-day response period to GAC Advice	Applicants	19 April	10 May	In progress
3	Publish GAC Communiqué to solicit input on how the New gTLD Board Committee should address GAC advice regarding safeguards applicable to broad categories of New gTLD strings	Staff		23 April	Complete
4	Public comment period on how Board should address GAC Advice re: Safeguards	Public	23 April	Comment: 14 May; Reply: 4 June	In Progress
5	Collect and summarize applicant responses to GAC Advice	Staff	11 May	31 May	Not Started

6	Summarize and analyze public comments on how Board should address GAC Advice re: Safeguards	Staff	5 June	12 June	Not Started
7	Review and consider Applicant responses to GAC Advice and Public Comments on how Board should respond to GAC Advice re: Safeguards	New gTLD Program Committee	13 June	20 June	Not Started

Part 2 consists of actions for responding to each advice given by the GAC. In so doing, the NGPC is developing a GAC scorecard similar to the one used during the GAC and the Board meetings in Brussels on 28 February and 1 March 2011.

Each GAC scorecard item will be noted with a "1A", "1B", or "2":

- "1A" indicates that the NGPC's proposed position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the NGPC's proposed position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the NGPC's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC is required following relevant procedures in the ICANN Bylaws.

Part 2 of the Plan is not yet finalized and, with respect to some of the advice, cannot be finalized until after the review of the Public Comments due to be completed on 20 June.

The NGPC will next meet in Amsterdam on 18 May and will provide a further update following that meeting.

I hope this information is helpful.

Best Regards,

Stephen D. Crocker, Chair
ICANN Board of Directors

Ex. R-14

RESPONDENT'S EXHIBIT

Ex. R-14

Ex. R-14

Share

NGPC Progress on GAC Advice

10 May 2013

The ICANN Board New gTLD Program Committee (NGPC) wishes to share with the ICANN community its progress in consideration of the GAC advice and what steps are still to be taken. The NGPC met on 8 May to consider a Plan for responding to the Governmental Advisory Committee's advice on New gTLDs, transmitted to the Board through its 11 April Beijing Communiqué. The Plan is in two parts: Part 1 shown below consists of actions for soliciting input from Applicants and from the Community.

	Item	Resp.	Start Date	Compl. Date	Status
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4	Public comment period on how Board should address GAC Advice re: Safeguards	Public	23 April	Comment: May 14 Reply: 4 June	In Progress
5	Collect and summarize applicant responses to GAC Advice	Staff	11 May	31 May	Not Started
6	Summarize and analyze public comments on how Board should address GAC Advice re: Safeguards	Staff	5 June	12 June	Not Started

7	Review and consider Applicant responses to GAC Advice and Public Comments on how Board should respond to GAC Advice re: Safeguards	New gTLD Program Committee	13 June	20 June	Not Started

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Each GAC scorecard item will be noted with a "1A", "1B", or "2":

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- "1B" indicates that the NGPC's proposed position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the NGPC's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC is required following relevant procedures in the ICANN Bylaws.

Part 2 of the Plan is not yet finalized and, with respect to some of the advice, cannot be finalized until after the review of the Public Comments due to be completed on 20 June.

The NGPC will next meet in Amsterdam on 18 May and will provide a further update following that meeting.

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Minutes | New gTLD Program Committee

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04 Jun 2013

Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at http://www.icann.org/en/groups/board/new-gTLD.

A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 4 June 2013 at 13:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Chris Disspain, Bill Graham, Olga Madruga-Forti, Ray Plzak, George Sadowsky, Mike Silber, Judith Vazquez, and Gonzalo Navarro.

Thomas Narten, IETF Liaison was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.

Erika Mann, Francisco da Silva (TLG Liaison), and Kuo-Wei Wu sent apologies.

ICANN Staff in attendance for all or part of the meeting: Akram Atallah, Chief Operating Officer; John Jeffrey, General Counsel and Secretary; Megan Bishop, Michelle Bright, Samantha Eisner, Allen Grogan, Dan Halloran, Jamie Hedlund, Liz Le, Karen Lentz, Cyrus Namazi, Erika Randall, Amy Stathos, and Christine Willett.

These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 04 June 2013.

1. **GAC Advice Items**
   a. Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué
      Rationale for Resolution 2013.06.04.NG01

Operational Design Phase (ODP)
Implementation
Public Comment
Root Zone KSK Rollover
Technical Functions
ICANN Locations
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1. GAC Advice Items

The Chair introduced the item on the main agenda regarding responding the GAC advice issued in the Beijing Communiqué. The Chair briefly outlined the proposed course of action for the meeting. The Chair noted that the Committee received a letter from ALAC, which will be placed on the agenda for discussion at the next meeting.

At the request of the meeting shepherd, Chris Disspain, Jamie Hedlund walked the Committee through each of the items on the proposed "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013)" (the "1A Scorecard"), which is Annex 1 [PDF, 564 KB] of the proposed resolution and attached to the minutes for reference.

The Committee discussed accepting the GAC advice regarding application number 1-1165-42560 for .AFRICA and application number 1-1936-2101 for .GCC. Olga Madruga-Forti inquired whether the applicants would be permitted to withdraw their applications within a certain amount of time if the Committee accepted the GAC advice. After further discussion of the appropriate language to include in the 1A Scorecard and consultation with the General Counsel, the Committee agreed that the 1A Scorecard should indicate that the applicants may withdraw or may wish to seek relief via ICANN's accountability mechanisms, subject to the appropriate standing and procedural requirements.

The Committee discussed its proposed response on the GAC advice regarding the .HALAL and .ISLAM strings, and decided to accept the advice. The Committee agreed that its response should note that it stands ready to enter into a dialogue with the GAC. The Chair questioned whether the Committee needed to write a formal letter to the GAC transmitting this response. Heather Dryden suggested that this was not necessary. The proposed response informs the GAC that the Committee looks forward to liaising with the GAC as to how such dialogue should be conducted.

Olga Madruga-Forti raised a concern about acting on GAC advice that is non-consensus advice. Chris provided a brief history of the genesis of the language in the Applicant Guidebook (AGB) regarding GAC advice where the GAC expresses concerns—citing to the experience with the application for the .XXX string where there were number of governments who had concerns. The provision in the AGB provides governments who have deep concerns on certain strings (even if not a GAC consensus) a mechanism to have a dialogue with the Committee about its concerns.

Jamie commented that staff looked into the issue and determined that pursuant to AGB Section 3.1.2, it does not make a different whether the concerns are raised by the entire GAC or a few members; the Committee is expected to enter into a dialogue to understand the scope of the concerns.

The Committee engaged in discussions regarding accepting the GAC's advice on the list of strings that it advised should not proceed beyond initial evaluation. Thomas questioned whether the proposed response was too open-ended. Chris confirmed that the Committee's proposed response is crafted to indicate

that it will not proceed beyond initial evaluation and any dispute resolution until the Committee hears back from the GAC.

The Committee also discussed the proposed response on the GAC's advice regarding singular and plural strings. Bill Graham and the Chair suggested text edits to the 1A Scorecard to make it clear that the NGPC is accepting the advice to consider the issue of singular and plural strings. Mike Silber agreed that the response should be that the Committee will consider whether to allow single and plural versions of the same string.

The Committee decided that its response to the GAC's advice regarding protections for IGO names and acronyms was more appropriate to be sent in a letter and not within the 1A Scorecard. Jamie confirmed that the letter would be sent out under separate cover to the GAC.

The Committee agreed to accept the GAC's advice to finalize the RAA before approving any new gTLD contracts, and to advise the expert working group to take into account the GAC principles regarding WHOIS. After a review of the briefing materials, the Committee also agreed to accept the advice regarding protections for the IOC/RCRC names.

Jamie noted that the Committee was provided responses to the Annex II questions raised by the GAC in its Beijing Communiqué. The Committee agreed that it would transmit the responses to the GAC. Jamie also noted that the advice from the GAC requesting a written briefing on the ability to change strings was not included in the 1A Scorecard because it will be a separate briefing paper to the GAC.

Ray Plzak inquired whether the formulation of the responses to the GAC should reference the "Committee accepts this advice," or the "Board accepts this advice." The General Counsel responded that a whereas clause would be added to the proposed resolution to indicate that the Committee has the Board's authority to act on the GAC advice. George Sadowsky raised the issue that the 1A Scorecard being adopted by the Committee should be clearly labeled and identified so that it clear to the Committee and to the community which version of the 1A Scorecard is the final version adopted. The Chair, along with Chris and Ray concurred with this point and suggested that the 1A Scorecard be given a document number or other identifying information to give as much specificity as possible. The General Counsel read the proposed resolution as revised.

The Committee then took the following action:

a. Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, ICANN posted the Beijing Communiqué and officially notified applicants of the advice,

http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1;

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21-day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC's advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC's advice in the Beijing Communiqué similar to the one used during the GAC and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC advice, noting those as "1A" items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 to this Resolution, in response to the items of GAC advice in the Beijing Communiqué as presented in the scorecard.

Rationale for Resolution 2013.06.04.NG01

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the

GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013)" (the "1A Scorecard"), which includes nine (9) items of non-safeguard advice from the Beijing Communiqué as listed in the GAC Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC's advice.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 http://newgtlds.icann.org/en/applicants/gac-advice-responses. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

To note, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC advice not being considered at this time in the 1A Scorecard.

What concerns or issues were raised by the community?

As part of the 21-day applicant response period, ICANN received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: http://newgtlds.icann.org/en/applicants/gac-advice-responses.

What significant materials did the Board review?

As part of its deliberations, the NGPC reviewed the following materials

and documents:

- GAC Beijing Communiqué:

  http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf [PDF, 156 KB]

- Applicant responses to GAC advice:

  http://newgtlds.icann.org/en/applicants/gac-advice-responses

- Applicant Guidebook, Module 3:

  http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf [PDF, 261 KB]

- The NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013)

  Available as Annex 1 to the Resolution [PDF, 564 KB]

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

Are there positive or negative community impacts?

The adoption of the GAC advice as provided in the 1A Scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN posted the GAC advice and officially notified applicants of the advice on 18 April 2013 http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

The Chair took a roll call vote. All members of the Committee voted in favor of Resolution 2013.06.04.NG01. The Resolution carried.

Chris noted that the Committee's communications should be clear that the action taken is not the sum total of the 1As and that there could be additional iterations of the scorecard to address the other advice. Heather commented that it should be communicated to the GAC that this resolution is not related to the safeguard advice.

The Chair then called the meeting to a close.

Published on 26 June 2013

Ex. R-16

RESPONDENT'S EXHIBIT

ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01

NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué

4 June 2013

This document contains the NGPC's response to the GAC Beijing Communiqué issued 11 April 2013 <http://www.icann.org/en/news/correspondence/gac-to-board-11apr13-en> for the non-safeguard advice items in the GAC Register of Advice where the NGPC has adopted a score of "1A" to indicate that its position is consistent with the GAC advice as described in the Scorecard. Refer to the GAC Register of Advice for the full text of each item of advice in the GAC Beijing Communiqué <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>.

GAC Register #	Summary of GAC Advice		NGPC Response
1. 2013-04-11-Obj-Africa (Communiqué §1.a.i.1)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application**:** .africa (Application number 1-1165-42560)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.
2. 2013-04-11-Obj-GCC (Communiqué §1.a.i.2)	The GAC Advises the ICANN Board that the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number: 1-1936-2101)	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw (pursuant to AGB § 1.5.1) or seek relief according to ICANN's accountability mechanisms (see ICANN Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

GAC Register #	Summary of GAC Advice		NGPC Response
3. 2103-04-11-Religious Terms (Communiqué §1.a.ii)	The GAC Advises the Board that with regard to Module 3.1 part II of the Applicant Guidebook, the GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.	1A	The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that there are concerns about a particular application 'dot-example,' the ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns." Pursuant to Section 3.1.ii of the AGB, the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted. (Note a community objection has been filed with the International Centre for Expertise of the ICC against .ISLAM and .HALAL. Because formal objections have been filed, these applications cannot move to the contracting phase until the objections are resolved.)

GAC Register #	Summary of GAC Advice		NGPC Response
4. 2013-04-11-gTLDStrings (Communiqué §1.c)	In addition to this safeguard advice, the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently, the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, . yun, .thai, .zulu, .wine, .vin	1A	The NGPC accepts this advice. The AGB provides that "GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process)" (AGB § 3.1). At this time, ICANN will not proceed beyond initial evaluation of these identified strings. In other words, ICANN will allow evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now. (Note: community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn.)
5. 2013-04-11-CommunitySupport (Communiqué §1.e)	The GAC advises the Board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.	1A	The NGPC accepts this advice. Criterion 4 for the Community Priority Evaluation process takes into account "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set. (Note however that if a contention set is not resolved by the applicants or through a community priority evaluation then ICANN will utilize an auction as the objective method for resolving the contention.)

GAC Register #	Summary of GAC Advice		NGPC Response
6. 2013-04-11-PluralStrings (Communiqué §1.f)	The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion. Therefore the GAC advises the Board to reconsider its decision to allow singular and plural versions of the same strings.	1A	The NGPC accepts this advice and will consider whether to allow singular and plural versions of the same string.
7. 2013-04-11-RAA (Communiqué §2)	The GAC advises the ICANN Board that the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.	1A	The NGPC accepts this advice. The final draft of the RAA was posted for public comment on 22 April 2013. The new gTLD Registry Agreement was posted for public comment on 29 April 2013, and it requires all new gTLD registries to only use 2013 RAA registrars. The public comment reply period for the 2013 RAA closes on 4 June 2013. The NGPC intends to consider the 2013 RAA shortly thereafter.
8. 2013-04-11-WHOIS (Communiqué §3)	The GAC urges the ICANN Board to ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.	1A	The NGPC accepts this advice. The NGPC notes that staff has confirmed that the GAC Principles have been shared with the Expert Working Group.

GAC Register #	Summary of GAC Advice		NGPC Response
9. 2013-04-11-IOCRC (Communiqué §4)	The GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.	1A	The NGPC accepts the GAC advice. The proposed final version of the Registry Agreement posted for public comment on 29 April 2013 includes protection for an indefinite duration for IOC/RCRC names. Specification 5 of this version of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD." This protection was added pursuant to a NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (204.11.26.NG03). The resolution recognized the GNSO's initiation of an expedited PDP. Until such time as the GNSO approves recommendations in the PDP and the Board adopts them, the NGPC's resolutions protecting IOC/RCRC names will remain in place. Should the GNSO submit any recommendations on this topic, the NGPC will confer with the GAC prior to taking action on any such recommendations.

Ex. R-17

RESPONDENT'S EXHIBIT

Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy

Approved Resolution | Meeting of the New gTLD Program Committee

04 Jun 2013

1. **Main Agenda**
   a. Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué
      Rationale for Resolution 2013.06.04.NG01

1. Main Agenda:

a. Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, ICANN posted the Beijing Communiqué and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1;

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21- day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC's advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC's advice in the Beijing Communiqué similar to the one used during the GAC and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC advice, noting those as "1A" items.

Operational Design Phase (ODP)
Implementation
Public Comment
Root Zone KSK Rollover
Technical Functions
ICANN Locations
Help

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 [PDF, 564 KB] to this Resolution, in response to the items of GAC advice in the Beijing Communiqué as presented in the scorecard.

Rationale for Resolution 2013.06.04.NG01

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws http://www.icann.org/en/about/governance/bylaws#XI permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013), which includes nine (9) items of non- safeguard advice from the Beijing Communiqué as listed in the GAC Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC's advice.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 http://newgtlds.icann.org/en/applicants/gac-advice-responses. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

To note, on 23 April 2013, ICANN initiated a public comment forum to

solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm. The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC advice not being considered at this time in the attached scorecard.

What concerns or issues were raised by the community?

As part of the 21-day applicant response period, ICANN received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: http://newgtlds.icann.org/en/applicants/gac-advice-responses.

What significant materials did the Board review?

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué: http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf [PDF, 156 KB]
- Applicant responses to GAC advice: http://newgtlds.icann.org/en/applicants/gac-advice-responses
- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf [PDF, 261 KB]

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

Are there positive or negative community impacts?

The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the

greatest number of new gTLD applications to continue to move forward as soon as possible.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN posted the GAC advice and officially notified applicants of the advice on 18 April 2013 http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Published on 6 June 2013

Ex. R-18

RESPONDENT'S EXHIBIT

Reconsideration Request

November 14, 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit http://www.icann.org/en/general/bylaws.htm#IV and http://www.icann.org/en/committees/board-governance/.

This form is provided to assist a requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requester Information

Name: GCCIX, W.L.L.

Address: Contact Information Redacted

Email: Contact Information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

_X__ Board action/inaction

___ Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

NGPC acceptance of GAC Advice to reject .GCC gTLD application. NGPC refusal to consider expert WIPO panelist determination, and NGPC refusal to consider contrary recommendation from GNSO.

4. Date of action/inaction:

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

June 4, 2013. Rationale for the action and inaction was requested via letter to ICANN dated June 19, 2013, and again via letter to ICANN dated September 25, 2013 (copies attached in Exh. A). The letters further requested the chance to request Reconsideration once such rationale was provided.

It only became evident on October 31 that such rationale seemingly is not forthcoming from ICANN, and thus Applicant timely seeks reconsideration of the NGPC's apparent decisions to date:

1) to accept GAC Advice to reject the .GCC application, despite lack of any rationale for such Advice;

2) to refuse to request rationale from the GAC;

3) to refuse to provide any rationale for the NGPC decision to accept GAC Advice;

4) to refuse to allow the WIPO Legal Rights Objection to be heard;

5) to refuse to provide any rationale for the refusal to consider the WIPO expert determination;

6) to consider the GNSO PDP work and recommendations regarding IGO acronym protection at the top-level;

7) to refuse to provide any rationale for failing to consider the GNSO PDP work and recommendations; and,

8) to refuse to consider the conflict between the NGPC decision thus far to reject the .GCC application, apparently based on purported IGO name rights, and the GNSO PDP consensus against IGO acronym protection at the top level.

There are no firm dates associated with any of these decisions, except the first. Instead there apparently has been deliberative process within ICANN, presumably in consideration of Applicant's previous letters, culminating in the October 31 letter from Ms. Christine Willett, discussed below.

5. On what date did you become aware of the action or that action would not be taken?

(Provide the date you learned of the action/that action would not be taken. If more than fifteen days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

October 31, 2013. In response to Applicant's letter dated September 25, 2013, ICANN's letter of October 31 (copy attached in Exh. A) seems to indicate that no rationale for the action or inaction is forthcoming, despite Applicant's repeated requests. Until that date, due to correspondence between Applicant and Ms. Willett, and ongoing work of the GNSO PDP Working Group referenced below, it was not clear that Ms. Willett or ICANN believed the NGPC resolution to be supported by any documented rationale. Until that date, Applicant reasonably believed that ICANN would provide some semblance of documented rationale for this critical decision.

6. Describe how you believe you are materially affected by the action or inaction:

Applicant has invested more than USD 400,000 in its application to operate a gTLD string that is not prohibited by the terms of the Applicant Guidebook. Applicant reasonably estimates a multi-million dollar business opportunity from operating the .GCC gTLD.

Applicant's TLD application has been rejected by the GAC in its Beijing Communique, without any rationale whatsoever. The GAC rejection was accepted by the NGPC, without any rationale whatsoever, except to refer to the Applicant Guidebook provisions with respect to GAC Advice. Applicant has tried via two letters to initiate discussion with ICANN staff, and has specifically requested rationale both times, but it has not been provided.

Applicant fully responded to the Legal Rights Objection filed by the Cooperation Council for Arab States of the Gulf, which claims rights in the GCC acronym. Applicant provided voluminous evidence, including an expensive expert survey, to refute the CCASG's assertion of rights (copy attached as Exh. B). ICANN without rationale has instructed WIPO not to hear the Objection. This response cost applicant at least USD 50,000, including expert panelist fees which have not been refunded. Applicant's two letters specifically requested that ICANN instruct the WIPO panel to proceed with the expert determination, as the Applicant Guidebook specifically suggests that the ICANN Board should consider any such determination, or to provide rationale for the refusal to do so. ICANN has not responded to these requests.

Applicant has tracked the progress of a GNSO PDP Working Group, which has just issued its Final Report on the Protection of IGO and INGO Identifiers (copy attached as Exh. C). The Final Report, Section 3.5, documents the formal "Consensus Against" any recommendation to protect IGO acronym identifiers. The draft GNSO Council resolution, to be discussed at the November 20, 2013, meeting in Buenos Aires, would resolve as follows (Section 3; copy attached as Exhibit D):

> At the top-level, acronyms of the RCRC, IOC, IGOs and INGOs under consideration in this PDP shall not be considered as "Strings Ineligible for Delegation".

In other words, purported acronyms of any IGO are considered by the GNSO Working Group, and thus likely by the GNSO Council, to be eligible for delegation as

contemplated in the Applicant Guidebook. It is expected that the ICANN Board consequently will accept that recommendation of the Council.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

Internet users who seek to use the .GCC domain name are harmed by its continued unavailability. See Exh. A, June 19 letter. The GNSO constituencies, Working Group members, and public commenters, who were virtually unanimous in their recommendation against IGO acronym protection, will be harmed by the NGPC refusal to consider their consensus recommendation. See Exh. C, Sec. 3.5. ICANN itself will suffer further degradation in community interest in PDP participation, if the consensus recommendation is ignored by NGPC. ICANN will further be harmed if the ICANN Board accepts the GNSO Council recommendation as expected, as the NGPC action thus far to reject the .GCC application is directly contrary to that recommendation.

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

In response to the NGPC action of June 4, 2013, accepting the GAC Advice to reject the .GCC application, Applicant submitted a letter to ICANN on June 19, 2013 – within fifteen days of the action – seeking rationale for the decision since absolutely none had, or has, been provided. See Exh. A. The letter further requested the chance to request Reconsideration once such rationale was provided. The letter further described the ICANN Board's instruction to the GNSO with respect to protection of IGO names, and the emerging consensus in the GNSO against any top-level protection for IGO acronyms. And the letter further requested that the NGPC allow the WIPO Legal Rights Objection to be heard.

On September 5, 2013, purportedly in response to the June 19 letter, Ms. Christine Willett of ICANN responded. Unfortunately, despite the ten weeks taken to prepare and forward a response, Ms. Willett still did not address in any meaningful way GCCIX' direct questions about ICANN's purported rejection of the .GCC new gTLD application. See Exh. A. Instead, the letter merely quoted the NGPC resolution and

the accompanying Briefing Materials, neither of which provide any rationale for the decision. The letter ignored Applicant's request to consider the GNSO PDP, and Applicant's request that the Legal Rights Objection be heard.

Therefore, on September 25, 2013, Applicant wrote again to explain that no rationale had yet been provided, to reiterate its request about the Legal Rights Objection and request rationale for the apparent refusal to grant such request, and to update Ms. Willett with respect to the GNSO PDP consensus. See Exh. A.

No rationale for GAC and NGPC rejection of .GCC application.

Applicant carefully reviewed the documents linked within the September 5 letter, which Ms. Willett claimed to provide rationale for ICANN's purported rejection of the application -- specifically the two documents at these links:

http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm

http://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en

The Briefing Materials provide no rationale from the GAC or ICANN Board, but only include GCCIX' response to the GAC Advice. The NGPC resolution makes no mention of the .GCC application whatsoever, nor any effort to explain its rejection. The NGPC resolution adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as Annex 1 to the Resolution. That document, in turn, states only the following with respect to the .GCC application:

> Summary of GAC Advice: The GAC Advises the ICANN Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .gcc (application number 1-1936-2101).
>
> NGPC Response: The NGPC accepts this advice. The AGB provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) The NGPC directs staff that pursuant to the GAC Advice and Section 3.1, of the Applicant Guidebook, Application number 1-1936-2101 for .gcc will not be approved. In accordance with the AGB the applicant may withdraw ... or seek relief according to ICANN's accountability mechanisms ....

In turn, the GAC Advice stated within the Beijing Communique dated April 11, 2013, simply stated that the GAC had reached consensus to reject the .GCC application, without any explanation whatsoever. The GAC meetings in Beijing were closed to the public and to GCCIX, and the GAC made no public effort to explain its decision as to .GCC.

Clearly, GCCIX has not been provided any rationale whatsoever for the GAC's or the NGPC's purported rejection of the .GCC application. GCCIX knew this in June, when it specifically asked ICANN for such rationale. ICANN still has failed to provide it, some four months and two letters later. Thus, Applicant again reiterates the request for written documentation of the rationale for this critical decision, which if ultimately implemented will cost GCCIX hundreds of thousands of dollars in lost investment, and millions of dollars in lost business opportunity.

No rationale for disregarding Legal Rights Objection process.

ICANN has also failed to provide any rationale for stopping the Legal Rights Objection process initiated with respect to the .GCC application, even though that Objection was fully briefed by the Objector and the Applicant, and fees paid to WIPO to adjudicate the dispute. The Applicant Guidebook, §3.1 re GAC Advice, specifically provides: "The ICANN Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in

cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures."

ICANN has not provided any rationale for failing to allow the independent expert to hear the Legal Rights Objection, even though the issues raised in the GAC Advice appear to be pertinent to that Objection. Of course it is hard to determine whether it is pertinent, as the GAC has not provided any rationale for its decision. But GCCIX has been informed by GAC members that the Objector, Cooperation Council for the Arab States of the Gulf ("CCASG"), was the prime instigator of the GAC advice to reject the .GCC application. Any reasoning of the GAC, if any, remains a closely guarded secret within the GAC and ICANN, as all relevant GAC sessions in Beijing were closed to the public, and no minutes have ever been distributed. But the CCASG's public Legal Rights Objection indicates that its opposition to the application is based upon CCASG's purported legal rights to the GCC acronym.

So, it defies common sense that the ICANN Board would fail to allow an independent expert to provide its opinion on the application; particularly when the governmental entity behind the GAC advice has participated in the Objection process, and the applicant has invested heavily in its Response. The ICANN Board cannot reasonably address whether it should disregard the "presumption" to accept GAC advice, if it fails to consider the expert determination on the issue which is specifically contemplated in §3.1 of the Applicant Guidebook. Therefore, GCCIX reiterates its

request that ICANN direct WIPO to continue to decide the Objection, and that the ICANN Board consider the decision of the independent WIPO expert.

At minimum, the NGPC itself should consider the Objection and the Applicant's Response itself, if it is not interested in the independent expert determination by WIPO. See Exh. B.

No rationale for disregarding GNSO input re protection of IGO identifiers.

In her September 5 letter, Ms. Willett stated that:

> [T]he NGPC adopted a resolution on 2 July 2013 to require registry operators to implement temporary protections for the IGO names and acronyms on the GAC's IGO List dated 22/03/2013 while the GAC and NGPC work through the implementation issues. This list previously established by the GAC includes the name "Cooperation Council for the Arab States of the Gulf," and its acronym "GCC".
> http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.b

However, that NGPC resolution is irrelevant, as it only addresses acronym protection at the second level of new gTLDs. This is clear from Ms. Willett's letter, referring to a requirement of registry operators, and from the resolution itself which

refers to Specification 5 of the draft Registry Agreement. The NGPC resolution does not address IGO acronym protection at the top level. Furthermore, the GAC List provides no rationale for including GCC as the purported acronym of the CCASG.

The GNSO Working Group on Protection of IGO Names has issued its Final Report to the GNSO Council. See Exh. C. That Working Group has reached broad "Consensus Against" any recommendation that IGO acronyms shall not be protected at the top-level. This is reflected in the draft GNSO Council resolution to be discussed on November 20, 2013, in Buenos Aires. See Exh. D. Given the level of consensus within the Working Group, it is likely that a Supermajority of the GNSO Council will approve this recommendation, which per the ICANN Bylaws (§3.9.i and Annex A, §9.a) "shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN."

ICANN has given no rationale for disregarding the pending final recommendation of this PDP Working Group and the GNSO Council, or for circumventing the GNSO PDP process and ICANN Bylaws provisions which likely will require the Board to approve that recommendation. At minimum, ICANN should allow the GNSO process to complete, and the Board to act on the GNSO Council recommendations, before rejecting the .GCC application on the purported ground that GCC is an acronym of the CCASG. Such rejection would run directly counter to the GNSO PDP

recommendation on this point, and cannot be in the best interests of the ICANN community or ICANN.

Last word from ICANN; Decisions to be Reconsidered.

On October 31, 2013, Ms. Willett responded to Applicant's Sept. 25 letter by stating only that Applicant has not sought reconsideration in time. See Exh. A. However, Applicant has timely and repeatedly requested some semblance of rationale for the NGPC action, and has further timely and repeatedly requested the ability to request reconsideration once such rationale is provided. It only became evident on October 31 that such rationale seemingly is not forthcoming from ICANN, and thus Applicant timely seeks reconsideration of the NGPC's apparent decisions to date:

1) to accept GAC Advice to reject the .GCC application, despite lack of any rationale for such Advice;

2) to refuse to request rationale from the GAC;

3) to refuse to provide any rationale for the NGPC decision to accept GAC Advice;

4) to refuse to allow the WIPO Legal Rights Objection to be heard;

5) to refuse to provide any rationale for the refusal to consider the WIPO expert determination;

6) to consider the GNSO PDP work and recommendations regarding IGO acronym protection at the top-level;

7) to refuse to provide any rationale for failing to consider the GNSO PDP work and recommendations; and,

8) to refuse to consider the conflict between the NGPC decision thus far to reject the .GCC application, apparently based on purported IGO name rights, and the GNSO PDP consensus against IGO acronym protection at the top level.

There are no firm dates associated with any of these decisions, except the first. Instead there apparently has been deliberative process within ICANN, presumably in consideration of Applicant's previous letters, culminating in the October 31 letter.

9. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

The NGPC action to accept GAC Advice should be reversed, pending further investigation by the NGPC. The NGPC should request from the GAC its rationale for its Advice, since the Board cannot legitimately evaluate whether to accept it in the

absence of any rationale for it. The NGPC should instruct WIPO to hear and provide an independent expert determination in the Legal Rights Objection that has been fully briefed, with fees paid, per the Applicant Guidebook. The NGPC should consider the forthcoming GNSO Council resolution with respect to IGO acronym protection at the top level, and consequent Board action in response to the Council resolution. Upon receiving those three inputs, the NGPC should reconsider whether to accept the GAC Advice to reject the .GCC application.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

Applicant has suffered more than USD 400,000 in damages, in the event its .GCC application is ultimately rejected. This includes the USD 185,000 application fee to ICANN, plus legal and consulting fees in support of the application. Reversal of the current rejection, and consideration of the additional inputs requested by Applicant, may lead the NGPC to ultimately refuse to accept the GAC Advice.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

____ Yes

__X__ No

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm.

Exhibit A – Copies of letters between Applicant and ICANN since June 19, 2013.

Exhibit B – Applicant's Response to Legal Rights Objection, plus Annexes – this voluminous documentation is downloadable at the following Dropbox link:

https://www.dropbox.com/s/tii7195izvlfwka/LRO%20response%20final.zip

Exhibit C – Final Report on the Protection of IGO and INGO Identifiers

Exhibit D – Draft GNSO Council Resolution re Final Report recommendations

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

M. Dronse

Signature

14/11/2013

Date

PO Box 20707 Bahrain GCCIX W.L.L

Ex. R-19

RESPONDENT'S EXHIBIT

RECOMMENDATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)

RECONSIDERATION REQUEST 13-17

8 JANUARY 2014

The Requester seeks reconsideration of the New gTLD Program Committee's 4 June 2013 resolution accepting the Governmental Advisory Committee's consensus advice to reject the Requester's application for the .GCC string.

I. Brief Summary.

The Requester applied for the .GCC string. The Objector in the underlying proceedings filed a legal rights objection ("LRO") to .GCC. Then, the GAC issued consensus advice that ICANN not approve the .GCC application. The NGPC accepted this advice. As the Requester's application was not permitted to proceed, the objection proceedings were terminated before an expert determination was rendered. The Requester claims that: (1) the GAC failed to provide rationale for its consensus advice on the .GCC application; (ii) the NGPC failed to provide an rationale for accepting this GAC advice; (iii) ICANN has not provided rationale for not allowing the LRO proceedings to conclude; and (iv) ICANN has not provided any rationale for disregarding GNSO input regarding the protection of International Organization identifiers.

In light of these above stated claims, the Requester essentially asks that: (i) the NGPC's decision to accept GAC advice be reversed; (ii) the NGPC request that the GAC provide rationale for its advice; (iii) the NGPC instruct the Expert Panel to render a determination on the terminated LRO proceedings; (iv) the NGPC consider the "forthcoming GNSO Council resolution relating to IGO acronym protection at the top level, and the consequent Board action in response to the Council's resolution"; and (iv) upon receiving the GAC's rationale, the expert

determination on the LRO, and the GNSO Council's resolution, the NGPC reconsider whether to accept the GAC advice to reject Requester's application for the .GCC string.

As a preliminary matter, the Request is untimely and fails on this basis alone. The challenged NGPC resolution was published on 6 June 2013. The Request was received on 14 November 2013, significantly more than the required fifteen days from the date upon which the challenged resolution was first published, thereby rendering the Request untimely under the Bylaws.

With respect to the claim that the GAC failed to provide an explanation/rationale for its consensus advice, reconsideration is available for challenges to staff or Board actions or inactions, not for challenges to advisory committees or any other ICANN bodies.

With respect to the claim that the NGPC failed to provide rationale for its rejection of the .GCC application to the extent the Requester claims that the NGPC acted without considering material information – *i.e.,* without considering either an expert determination on the LRO and the GNSO Working Group's Final Report – the claim does not support reconsideration. The information identified was not available to the NGPC at the time of the 4 June 2013 Resolution. And even if the information was available when the Resolution passed, the Requester has not identified what the information would have provided to the NGPC and how it would have changed the decision taken.

With respect to the remaining claims – that the NGPC failed to explain why the LRO proceedings on the .GCC application were terminated or that the NGPC failure to provide rationale for the alleged disregard of GNSO input - neither constitutes a Board action that is subject to reconsideration. Even if assuming that a Board action could be reconsidered based

upon a claim that the Board violated an established policy or process in taking that action, the Requester has not demonstrated any policy or process violation.

Therefore, the BGC recommends that Request 13-17 be denied.

II. Facts.

A. Background Facts.

The Requester GCCIX, W.L.L. ("Requester" or "GCCIX") submitted a new gTLD application for the .GCC string.

The GAC issued a GAC Early Warning (https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings) on 20 November 2012, stating that the governments of Bahrain, Oman, Qatar and UAE and the Gulf Cooperation Council expressed their serious concerns with respect to (1) The applied for new gTLD exactly matches a name of an Intergovernmental Organization, and (2) Lack of community involvement and support. The rationale for their concerns was set out in the GAC Early Warning notice.

On 13 March 2013, the Cooperation Council for the Arab States of the Gulf ("CCASG") filed a legal rights objection ("LRO") to the Requester's application, claiming rights to the GCC acronym.[1]

On 11 April 2013, the Governmental Advisory Committee ("GAC") issued its Beijing Communiqué, which included consensus advice to ICANN that it not approve the Requester's application for the .GCC string.[2] Specifically, the GAC advised the Board that, pursuant to

[1] CCASG filed a LRO asserting that the applied-for .GCC string "infringes the existing legal rights of the objector." (Guidebook, Section 3.2.1.)

[2] The New gTLD Program includes a procedure pursuant to which the GAC may provide advice to ICANN concerning a specific application for a new gTLD. The procedures are set out in Module 3 of the Applicant Guidebook ("Guidebook") (http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf).

Section 3.1 of the Guidebook, the GAC "has reached consensus on GAC Objection Advice" on the application for .GCC.[3] (Beijing Communiqué, Pg. 3, available at http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf.)

On 18 April 2013, ICANN published the GAC advice thereby notifying the Requester and triggering the 21-day applicant response period.[4] (http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en.) Prior to the 10 May 2013 deadline, the Requester submitted to the Board a response to the GAC consensus advice, which referenced the information provided in the GAC Early Warning notice. (http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1936-21010-en.pdf; *see also* Summary and Analysis of Applicant Responses to GAC Advice, Briefing Materials 3 ("NGPC Briefing Material") available at https://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf.)

On 15 May 2013, the Requester filed a response to CCASG's LRO. (Request, Pg. 5; Exhibit B to Request: GCCIX's Response to Legal Rights Objection and supporting exhibits.)

The NGPC developed a scorecard intended to contain the NGPC's response to the GAC advice found in the Beijing Communiqué ("NGPC Scorecard"). (http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf.) With respect to the .GCC string, the NGPC Scorecard stated in pertinent part:

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[3] GAC advice regarding a new gTLD application may include consensus advice: "[T]hat a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." (Guidebook, Section 3.1.) The GAC reached consensus with respect to only two gTLD applications (.AFRICA and .GCC).

[4] Where GAC advice is received by the Board concerning an application, ICANN is required to: "[P]ublish the advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board." (Guidebook, Section 3.1.)

> The NGPC accepts [the GAC] advice. The [Guidebook] provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved."

(NGPC Scorecard, Pg. 2.)

On 4 June 2013, the NGPC adopted the NGPC Scorecard ("4 June 2013 Resolution"). (http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a.) Staff was therefore directed not to approve the Requester's application for the .GCC string, and the Requester was invited to either withdraw the application or "seek relief according to ICANN's accountability mechanisms." (NGPC Scorecard, Pg. 2.)

Because the Requester's application was not permitted to proceed, CCASG's LRO was terminated before a determination could be rendered.[5]

On 19 June 2013, the Requester submitted a letter to the ICANN Board expressing its dissatisfaction with the NGPC's 4 June 2013 action and the NGPC's (and GAC's) purported failure to provide an explanation for the action. (Exhibit A to Response.) Requester was seeking a rationale for the NGPC's decision and requesting that CCASG's LRO be allowed to continue.

On 5 September 2013, ICANN responded to the Requester's 19 June 2013 letter.

On 25 September 2013, the Requester's counsel responded to ICANN's 5 September 2013 letter, making similar claims as those asserted in the formal Request and again seeking a rationale for the NGPC's decision and requesting that CCASG's LRO be allowed to continue.

[5] A letter from the Arbitration and Mediation Center of the World Intellectual Property Organization ("WIPO"), the independent dispute resolution provider assigned to administer LROs (Guidebook, Section 3.2.3), was received on 20 November 2013 in response to the Request. The letter noted that the Request was "incorrect in asserting that 'expert panelist fees […] have not been refunded"; WIPO refunded the panel fees to Requester on 17 September 2013. (http://www.icann.org/en/groups/board/governance/reconsideration/wipo-to-bgc-20nov13-en.pdf.)

(Exhibit A to Response.)

B. Requester's Claims.

Requester seeks reconsideration on the following grounds:

First, the Requester claims that the GAC failed to provide an explanation/rationale for its consensus advice that the application for .GCC should not proceed and that the NGPC failed to provide an explanation/rationale for its acceptance of the GAC advice on .GCC's application. (Request, Section 8, Pgs. 7-10.)[6]

Second, the Requester claims that ICANN has not provided any rationale for failing to allow WIPO to render a decision on CCASG's LRO, even though the issues raised in the GAC advice "appear to be pertinent" to CCASG's LRO because CCASG "was the prime instigator of the GAC advice to reject the .GCC application." (Request, Pg. 11.)

Third, the Requester claims that ICANN has not provided any rationale for disregarding GNSO input regarding the protection of International Organization identifiers, and specifically the GNSO Working Group's "Final Report on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process" (hereinafter, GNSO Working Group's Final Report").[7] (Request, Pgs. 12-13; Exhibit C to Request.)

C. Relief Requested.

The Requester asks that the NGPC's decision to accept GAC advice be reversed, pending further investigation by the NGPC. The Requester asks that the NGPC request from the GAC its

[6] The Requester asserts that it has repeatedly requested (and reiterates its request) for "written documentation of the rationale" for the GAC and the NGPC's rejection of the .GCC application. (Request, Pgs. 7-10; Exhibit A to Request.)

[7] As suggested in the Request, the GNSO Council has since adopted the Working Group's "Consensus recommendations" that IGO acronyms "under consideration in this PDP shall not be considered as 'Strings Ineligible for Delegation'" at the top level. (http://gnso.icann.org/en/council/resolutions#201311.)

rationale for its advice so that the Board may "legitimately evaluate whether to accept" the advice. Requester also asks that the NGPC instruct WIPO to render a decision on the terminated LRO to Requester's application for the .GCC string. The Requester further asks that the NGPC consider the "forthcoming GNSO Council resolution relating to IGO acronym protection at the top level, and the consequent Board action in response to the Council's resolution." Upon receiving the GAC's rationale, WIPO's expert determination on the LRO, and the GNSO Council's resolution, Requester asks that the NGPC reconsider whether to accept the GAC advice to reject Requester's application for the .GCC string. (Request, Section 9, Pgs. 15-16.)

III. Issues.

As discussed in the foregoing Section, Requester asks ICANN to consider: (i) whether the GAC and the NGPC failed to provide a rationale for its rejection of the .GCC application; (ii) whether ICANN failed to provide a rationale for terminating the LRO process with respect to the .GCC application; and (iii) whether ICANN failed to provide a rationale for disregarding GNSO input regarding the protection of IGO identifiers, and specifically, the GNSO Working Group's Final Report.

In view of the claims set forth in Request 13-17, the issues for reconsideration are whether the purported failure to provide rationales for the following actions supports reconsideration:

1. The GAC's and the NGPC's rejection of the .GCC application;

2. ICANN's termination of CCASG's LRO before a determination could be rendered; and

3. ICANN's alleged disregard of GNSO input regarding the protection of IGO identifiers, and specifically, the GNSO Working Group's Final Report.

IV. The Relevant Standards for Evaluating Reconsideration Requests.

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with the criteria specified in Article IV, Section 2.2 of the Bylaws.[8] (Bylaws, Art. IV, § 2.)

Reconsideration requests must be submitted within fifteen days after:

- For requests that challenge Board actions, the date on which information about the challenged Board action is first published in a resolution with an accompanying rationale.
- For requests that challenge staff inaction, the date on which the affected person reasonably concluded (or reasonably should have concluded) that action would not be taken in a timely manner.

(Bylaws, Art. IV, § 2.5.)

To properly initiate a request for reconsideration, the requesting party must complete the Reconsideration Request Form posted on the ICANN website ("Reconsideration Request Form").[9] The requesting party must also acknowledge and agree to the terms and conditions set forth in the Reconsideration Request Form when filing. (Bylaws, Art. IV, § 2.6.)

When challenging a Board action or inaction, the requesting party must provide a:

> [D]etailed explanation of the material information not considered by the Board. If the information was not presented to the Board, provide

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[8] Article IV, Section 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

> (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
>
> (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
>
> (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

[9] *See* http://www.icann.org/en/groups/board/governance/reconsideration/request-form-11apr13-en.doc.

> the reasons why [requesting party] did not submit the material information to the Board before it acted or failed to act. 'Material information' means facts that material to the decision. …
>
> Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration.

(Reconsideration Request Form, Section 8 "Detail of Board or Staff Action – Required Information".)

Dismissal of a request for reconsideration is appropriate if the Board Governance Committee ("BGC") recommends, and in this case the NGPC agrees, that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws. (Bylaws, Art. IV, § 2.9.)

V. Analysis and Rationale.

A. The Request Is Untimely.

The Request is untimely and fails on this basis alone. The challenged NGPC resolution was published on 6 June 2013. The Request was received on 14 November 2013, more than fifteen days from the date upon which the challenged resolution was first published, thereby rendering the Request untimely under the Bylaws.

In a 25 September 2013 correspondence, the Requester asked for the "prompt initiation of the Reconsideration Request process described in ICANN's Bylaws, Art. IV." (Exhibit A to Request: 25 September 2013 Letter from GCCIX's counsel to ICANN.)[10] In a 31 October 2013

[10] Exhibit A to Request consists of a set of correspondence between Requester and ICANN from 4 June 2013 through 31 October 2013. (Request, Pg. 17.)

response, ICANN made it clear to Requester that the time to file a reconsideration request based on the 4 June 2013 NGPC resolution had "expired." (Exhibit A to Request: 31 October 2013 Letter from ICANN to GCCIX's counsel.)

In the Request, Requester claims that it was not until ICANN's 31 October 2013 correspondence that it "became evident" that ICANN would not be providing the requested rationale for the 4 June 2013 NGPC resolution, and thus, the Request is timely because it was submitted within fifteen days of that correspondence. (Request, Pgs. 2 & 14.)

As noted above, reconsideration requests must be submitted within fifteen days after "the date on which information about the challenged Board action is first published in a resolution with an accompanying rationale." (Bylaws, Art. IV, § 2.5.) Although Requester now appears to be claiming that the Request is timely based on a purported inaction – *i.e.,* the date Requester concluded that staff would not be providing the requested rationale for the 4 June 2013 NGPC resolution – the Request itself does not challenge this alleged inaction. Instead, the Request challenges the 4 June 2013 decision of the NGPC. Accordingly, the "deadline to file a Reconsideration Request to this decision expired on 21 June 2013"; fifteen days after the challenged resolution was published. (Exhibit A to Request: 31 October 2013 Letter from ICANN to GCCIX's counsel.)

Notwithstanding the foregoing, even if the Request was timely, the BGC finds that the stated grounds for the Request do not support reconsideration.

B. The Purported Failure to Provide Rationales Do Not Support Reconsideration of a Board Action or Inaction.

The Requester contends that the GAC and the NGPC failed to provide a rationale for their respective decisions to reject Requester's application for the .GCC string. The Requester also claims that ICANN (which presumably refers to the NGPC) failed to provide a rationale for

certain actions that, but for the actions, would have resulted in additional information relevant to the Requester's application. (Request, Section 8, Pgs. 7-13.)

A challenge of a Board action (or inaction) must be based upon the Board taking an action (or inaction) without consideration of material information or as a result of the Board's reliance on false or inaccurate material information.[11] (Bylaws, Art. IV, § 2.2.) It is unclear from the Request how the NGPC's purported failure to provide an explanation for certain actions upon request constitutes an action or inaction that is subject to reconsideration.

To state a request for reconsideration of a Board action (or inaction), the Requester must: (1) identify the information that the Board had available to it but did not consider; and (2) identify that the information would be material to that decision. If the Board did not have the information, the Requester must explain why it did not provide that information to the Board in advance of the decision that is being challenged. The Requester has not alleged or provided any evidence demonstrating that the Board took action without considering material information.[12] In fact the Board had access to the GAC Early Warning notice, the GAC Advice, and the applicant's response to the GAC advice which referenced the GAC Early Warning notice. The entire Request is instead premised on an alleged failure to provide explanations for Board (through the NGPC) actions. As such, the Requester's claims do not provide a proper basis for reconsideration under ICANN's Bylaws.

[11] Requester is not challenging a staff action. (Request, Section 1, Pg. 1.) To challenge a staff action, Requester would need to demonstrate that the staff action violated an established policy or process. (Bylaws, Art. IV, § 2.2.) Requester has made no such claims.

[12] Requester is also not claiming that the 4 June 2013 Resolution was the result of the NGPC's reliance on false or inaccurate material information.

1. The GAC's and NGPC's Alleged Failure to Provide a Rationale for the Rejection of the .GCC Application is not a Proper Basis for Reconsideration.

The Requester contends that reconsideration is warranted because the GAC failed to provide rationale for its consensus advice that the application for .GCC not proceed and that the NGPC failed to explain why it accepted this advice.[13] (Request, Section 8, Pgs. 7-10.) The Requester's contention is not supported. Reconsideration is not the proper mechanism to challenge this action. First, as noted above, reconsideration is available for challenges to staff or Board actions or inactions, not for challenges to advisory committees or any other constituencies established under ICANN's Bylaws. (Bylaws, Art. IV, § 2.2.)

Second, to the extent the Requester claims that the NGPC acted without considering material information – *i.e.,* the NGPC accepted the GAC's advice to reject Requester's application for the .GCC string without considering WIPO's determination on CCASG's LRO and the GNSO Working Group's Final Report – the claim would still not support reconsideration. The information identified was not available to the NGPC at the time of the 4 June 2013 Resolution. WIPO had not rendered a determination on CCASG's LRO and, thus, there was no expert determination for the NGPC to consider. Similarly, the GNSO Working Group's Final Report was not issued until 10 November 2013 – five months after the challenged resolution.

Even if the information was available at the time of the 4 June 2013 Resolution, the Requester has not identified what the information would have provided to the NGPC and how it would have changed the decision taken. The Requester does not even suggest that a WIPO

[13] It should also be noted that the 4 June 2013 resolution did include a lengthy rationale stating, among other things, why (and under what authority) the NGPC is addressing the GAC advice, which stakeholders were consulted, what concerns or issues were raised by the community, what significant materials the Board reviewed as part of its deliberations, what factors the Board found to be significant, and whether there was positive or negative community impacts. (4 June 2013 Resolution.)

determination on the LRO would result in a different outcome on its application; rather, Requester suggests only that a determination should have been obtained prior to making a decision on the .GCC application.

2. The NGPC's Alleged Failure to Provide a Rationale for Terminating CCASG's LRO Before a Determination Could be Rendered does not Support Reconsideration.

The Requester claims that the NGPC has not provided any rationale for failing to allow WIPO to render a decision on CCASG's LRO, even though the issues raised in the GAC advice "appear to be pertinent" to CCASG's LRO because CCASG "was the prime instigator of the GAC advice to reject the .GCC application." (Request, Pg. 11.)

For the reasons stated above, the Requester's arguments here likewise do not support reconsideration in that the NGPC's purported failure to provide an explanation for terminating the LRO process with respect to .GCC's application does not constitute a Board action that is subject to reconsideration.

Further, assuming a Board action could be reconsidered based upon a claim that the Board violated an established policy or process in taking that action (although this is not a proper ground for reconsideration), the Requester has not demonstrated any policy or process violation. Requester asserts that the "Applicant Guidebook specifically suggests that the ICANN Board should consider [the WIPO determination on the LRO], or to provide a rationale for the refusal to do so." (Request, Pg. 5.) To be clear, the Guidebook provides only that the "Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure." (Guidebook, Section 3.1 (emphasis added).) This discretionary provision does not require the NGPC to seek the advice of the WIPO-designated experts, nor does it require the NGPC to provide a rationale for deciding not to. While seeking advice from

independent experts is an avenue that the NGPC could have taken when considering the GAC advice on .GCC, the plain language of the Guidebook does not support any suggestion that the NGPC violated an established policy or process, and therefore made a decision without material information, when it did not seek the input of independent experts.

3. The NGPC's Purported Failure to Provide a Rationale for Allegedly Disregarding the GNSO Working Group's Final Report is not a Proper Basis for Reconsideration.

The Requester claims that ICANN has not provided any rationale for disregarding GNSO input regarding the protection of IGO identifiers, and specifically the GNSO Working Group's Final Report. (Request, Pgs. 12-13; Exhibit C to Request.)

For the same reasons stated above, the Requester has not stated a proper basis for reconsideration in that the NGPC's purported failure to provide a rationale for the alleged disregard of GNSO input, including the GNSO Working Group's Final Report, does not constitute a Board action that is subject to reconsideration.

Further, similar to above, assuming a Board action could be reconsidered based upon a claim that the Board violated an established process in taking that action (although this is not a proper ground for reconsideration), the Requester has not identified any policy or process that the NGPC contradicted. There is nothing in the Guidebook that requires the NGPC to wait for or otherwise seek GNSO input before considering GAC advice on new gTLDs, nor is there anything in the Guidebook that requires the NGPC to provide a rationale for deciding not to wait for or seek GNSO input. The Guidebook makes clear that ICANN is required to consider GAC advice "as soon as practicable." (Guidebook, Section 3.1.) Accordingly, there is no support for the Requester's contention that the NGPC should have waited more than five months for the GNSO Working Group's Final Report before accepting the GAC advice on the .GCC application.

VI. Decision.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and we therefore recommend that the Request be denied without further consideration.

Ex. R-20

RESPONDENT'S EXHIBIT

Ex. R-20

Approved Resolutions | Meeting of the New gTLD (generic Top Level Domain) Program Committee

This page is available in:
English |
العربية (https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-01-30-ar) |
Español (https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-01-30-es) |
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中文 (https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-01-30-zh)

30 Jan 2014

1. **Main Agenda**
   a. Reconsideration Request 13-17, GCCIX, W.L.L.
      Rationale for Resolution 2014.01.30.NG01

   b. Reconsideration Request 13-19, HOTREC
      Rationale for Resolution 2014.01.30.NG02

   c. Discussion of Report on String Confusion Expert Determinations

1. Main Agenda:

a. Reconsideration Request 13-17, GCCIX, W.L.L.

Whereas, GCCIX, W.L.L.'s ("GCCIX") Reconsideration Request 13-17, sought reconsideration of the New gTLD (generic Top Level Domain) Program Committee's ("NGPC") 4 June 2013 resolution accepting the Governmental Advisory Committee (Advisory Committee)'s consensus advice to reject the Requester's application for the .GCC string.

Whereas, the Board of Governance Committee ("BGC") considered the issues raised in Request 13-17.

Whereas, the BGC recommended that Request 13-17 be denied because GCCIX has not stated proper grounds for reconsideration and the New gTLD (generic Top Level Domain) Program Committee agrees.

Resolved (2014.01.30.NG01), the New gTLD (generic Top Level Domain) Program Committee adopts the BGC Recommendation on Reconsideration Request 13-17, which can be found at http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-gccix-08jan14-en.pdf (/en/groups/board/governance/reconsideration/recommendation-gccix-08jan14-en.pdf) [PDF, 146 KB].

Rationale for Resolution 2014.01.30.NG01

I. Brief Summary

Requester GCCIX applied for .GCC. GCCIX asked the Board (or here the NGPC) to reconsider its acceptance of the Governmental Advisory Committee (Advisory Committee)'s ("GAC (Governmental Advisory Committee)") consensus advice to reject the Requester's application for .GCC. The Objector in the underlying proceedings filed a legal rights objection ("LRO") to .GCC. Then, the GAC (Governmental Advisory Committee) issued consensus advice that ICANN (Internet Corporation for Assigned Names and Numbers) not approve the .GCC application. The NGPC accepted this advice. As GCCIX's application was not permitted to proceed, the objection proceedings were terminated before an expert determination was rendered. The Requester claims that: (1) the GAC (Governmental Advisory Committee) and the NGPC failed to provide rationales for rejecting the .GCC application; (ii) ICANN (Internet Corporation for Assigned Names and Numbers) has not provided

rationale for not allowing the LRO proceedings to conclude or for disregarding GNSO (Generic Names Supporting Organization) input regarding the protection of International Organization identifiers. The BGC concluded that: (i) the Request is untimely and fails on this basis alone; (ii) the claims regarding the alleged failure by the GAC (Governmental Advisory Committee) and NGPC to provide rationales relating to their actions regarding .GCC does not support reconsideration; and (iii) neither the NGPC's alleged failure to explain why the LRO proceedings on the .GCC application were terminated nor the NGPC's alleged failure to provide rationale for the alleged disregard of GNSO (Generic Names Supporting Organization) input constitutes a Board action that is subject to reconsideration. In sum, the BGC concluded that the Request has not stated proper grounds for reconsideration. The NGPC agrees.

II. Facts

A. Background Facts

GCCIX submitted a new gTLD (generic Top Level Domain) application for .GCC.

The Requester's application received a GAC (Governmental Advisory Committee) Early Warning in November 2012 (https://gacweb.icann.org/display/gacweb/GAC (Governmental Advisory Committee)+Early+Warnings (https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings)), stating that the governments of Bahrain, Oman, Qatar and UAE and the Gulf Cooperation Council expressed their serious concerns with respect to (1) The applied for new gTLD (generic Top Level Domain) exactly matches a name of an Intergovernmental Organization, and (2) Lack of community involvement and support. The rationale for their concerns was set out in the GAC

(Governmental Advisory Committee) Early Warning notice.

On 13 March 2013, the Cooperation Council for the Arab States of the Gulf ("CCASG") filed a LRO to the Requester's application, claiming rights to the GCC acronym.

On 11 April 2013, the GAC (Governmental Advisory Committee) issued its Beijing Communiqué, which included consensus advice to ICANN (Internet Corporation for Assigned Names and Numbers) that it not approve the Requester's application for the .GCC string.

On 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) published the GAC (Governmental Advisory Committee) advice thereby notifying the Requester and triggering the 21-day applicant response period. Prior to the 10 May 2013 deadline, the Requester submitted to the Board a response to the GAC (Governmental Advisory Committee) consensus advice, which referenced the information provided in the GAC (Governmental Advisory Committee) Early Warning notice.

The NGPC developed a scorecard containing the NGPC's response to the GAC (Governmental Advisory Committee) advice found in the Beijing Communiqué ("NGPC Scorecard"). With respect to the .GCC string, the NGPC Scorecard stated in pertinent part:

> The NGPC accepts [the GAC (Governmental Advisory Committee)] advice. The [Guidebook] provides that if "GAC (Governmental Advisory Committee) advises ICANN (Internet Corporation for Assigned Names and Numbers) that it is the

> consensus of the GAC (Governmental Advisory Committee) that a particular application should not proceed. This will create a strong presumption for the ICANN (Internet Corporation for Assigned Names and Numbers) Board that the application should not be approved."

(NGPC Scorecard, Pg. 2.)

On 4 June 2013, the NGPC adopted the NGPC Scorecard ("4 June 2013 Resolution") adopting the GAC (Governmental Advisory Committee) advice on the .GCC application. The Requester was invited to either withdraw the application or "seek relief according to ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms."

Because the Requester's application was not permitted to proceed, CCASG's LRO was terminated before a determination could be rendered.

On 19 June 2013, the Requester submitted a letter to the ICANN (Internet Corporation for Assigned Names and Numbers) Board expressing its dissatisfaction with the NGPC's 4 June 2013 action and the NGPC's (and GAC (Governmental Advisory Committee)'s) purported failure to provide an explanation for the action. The Requester was seeking a rationale for the NGPC's decision and requesting that CCASG's LRO be allowed to continue.

On 5 September 2013, ICANN (Internet Corporation for Assigned Names and Numbers) responded to the Requester's 19 June 2013 letter.

On 25 September 2013, the Requester's counsel responded to ICANN (Internet Corporation for Assigned Names and Numbers)'s 5 September 2013 letter, making similar claims as those asserted in the formal Request and again seeking a rationale for the NGPC's decision and requesting that CCASG's LRO be allowed to continue.

B. Requester's Claims

The Requester contends that the GAC (Governmental Advisory Committee) failed to explain its consensus advice that the application for .GCC not proceed and that the NGPC failed to explain its acceptance of that advice. The Requester further claims that ICANN (Internet Corporation for Assigned Names and Numbers) has not provided any rationale for failing to allow WIPO (World Intellectual Property Organization) to render a decision on CCASG's LRO. Finally, the Requester claims that ICANN (Internet Corporation for Assigned Names and Numbers) has not provided any rationale for disregarding GNSO (Generic Names Supporting Organization) input regarding the protection of International Organization identifiers, and specifically the GNSO (Generic Names Supporting Organization) Working Group's "Final Report on the Protection of IGO (Intergovernmental Organization) and INGO Identifiers in All gTLDs Policy Development Process" ("GNSO (Generic Names Supporting Organization) Working Group's Final Report").

III. Issues

The issues for reconsideration are whether the purported failure to provide rationales for the following actions supports reconsideration:

1. The GAC (Governmental Advisory Committee)'s and the NGPC's rejection of the .GCC application;

2. ICANN (Internet Corporation for Assigned Names and Numbers)'s termination of CCASG's LRO before a determination could be rendered; and

3. ICANN (Internet Corporation for Assigned Names and Numbers)'s alleged disregard of GNSO (Generic Names Supporting Organization) input regarding the protection of IGO (Intergovernmental Organization) identifiers, and specifically, the GNSO (Generic Names Supporting Organization) Working Group's Final Report.

IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 13-17 and finds the analysis sound.[1]

V. Analysis and Rationale

A. GCCIX's Request is Untimely.

The challenged NGPC resolution was published on 6 June 2013. The Request was received on 14 November 2013, more than 15 days from the date upon which the challenged resolution was first published, thereby rendering the Request untimely under the Bylaws.

In a 25 September 2013 correspondence, the Requester asked for the "prompt initiation of the Reconsideration Request process described in ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, Art. IV." (Exhibit A to Request: 25 September 2013 Letter from GCCIX's counsel to ICANN (Internet Corporation for Assigned Names and Numbers).) In a 31 October 2013 response, ICANN (Internet Corporation for Assigned Names and Numbers) made it clear to the Requester that the time to file a reconsideration request based on the 4 June 2013 NGPC resolution had "expired." The Requester claims that it was not until ICANN (Internet Corporation for Assigned Names and Numbers)'s 31 October 2013 correspondence that it "became evident" that ICANN (Internet Corporation for Assigned Names and Numbers) would not be providing the requested rationale for the 4 June 2013 NGPC resolution, and thus, the Request is timely because it was submitted within 15 days of that correspondence.

The Bylaws make clear that reconsideration requests must be submitted within fifteen days after "the date on which information about the challenged Board action is first published in a resolution with an accompanying rationale." (Bylaws, Art. IV, § 2.5.) Although the Requester appears to be claiming that the Request is timely based on a purported inaction – i.e., the date the Requester concluded that staff would not be providing the requested rationale for the 4 June 2013 NGPC resolution – the Request does not challenge this alleged inaction. Rather, the Request challenges the 4 June 2013 decision of the NGPC. Accordingly, the deadline to file a Reconsideration Request to this decision expired on 21 June 2013, 15 days after the challenged resolution was published. The Request could be

denied on this basis alone. Notwithstanding the foregoing, even if the Request was timely, the BGC found, and the NGPC agrees, that the stated grounds for the Request do not support reconsideration.

B. The Purported Failure to Provide Rationales Do Not Support Reconsideration of a Board Action or Inaction.

The BGC concluded, and the NGPC agrees, that the GAC (Governmental Advisory Committee)'s and the NGPC's alleged failure to provide a rationale for their respective decisions is not a proper basis for reconsideration. The BGC noted, and the NGPC agrees, that reconsideration is not the proper mechanism to challenge such action. First, reconsideration is available for challenges to staff or Board actions or inactions, not for challenges to advisory committees or any other constituencies established under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws. (Bylaws, Art. IV, § 2.2.) Second, a challenge of a Board action (or inaction) must be based upon Board action (or inaction) without consideration of material information or as a result of the Board's reliance on false or inaccurate material information.[2] (Bylaws, Art. IV, § 2.2.) The Requester has not alleged or provided any evidence demonstrating that the Board took action without considering material information.[3] In fact the Board had access to the GAC (Governmental Advisory Committee) Early Warning notice, the GAC (Governmental Advisory Committee) Advice, and the applicant's response to the GAC (Governmental Advisory Committee) advice, which referenced the GAC (Governmental Advisory Committee) Early Warning notice. To the extent that the Requester claims that the NGPC acted without considering

material information – i.e., the NGPC accepted the GAC (Governmental Advisory Committee)'s advice to reject Requester's application for the .GCC string without considering WIPO (World Intellectual Property Organization)'s determination on CCASG's LRO and the GNSO (Generic Names Supporting Organization) Working Group's Final Report – the claim would still not support reconsideration. The information identified was not available to the NGPC at the time of the 4 June 2013 Resolution. Even if the information was available at the time of the 4 June 2013 Resolution, the Requester has not identified what that information would have provided to the NGPC and how it would have changed the decision taken.

C. The NGPC's Alleged Failure to Provide a Rationale for Terminating CCASG's LRO Before a Determination Could be Rendered does not Support Reconsideration.

   The BGC concluded, and the NGPC agrees, that the Requester's arguments do not support reconsideration in that the NGPC's purported failure to provide an explanation for terminating the LRO process with respect to .GCC's application does not constitute a Board action that is subject to reconsideration. Assuming a Board action could be reconsidered based upon a claim that the Board violated an established policy or process in taking that action (although this is not a proper ground for reconsideration), the Requester has not demonstrated any policy or process violation.

D. The NGPC's Purported Failure to Provide a Rationale for Allegedly Disregarding the GNSO (Generic Names Supporting Organization)

Working Group's Final Report is not a Proper Basis for Reconsideration.

The BGC concluded, and the NGPC agrees, that for the same reasons stated above, the Requester has not stated a proper basis for reconsideration in that the NGPC's purported failure to provide a rationale for the alleged disregard of GNSO (Generic Names Supporting Organization) input, including the GNSO (Generic Names Supporting Organization) Working Group's Final Report, does not constitute a Board action that is subject to reconsideration. Assuming a Board action could be reconsidered based upon a claim that the Board violated an established process in taking that action (although this is not a proper ground for reconsideration), the Requester has not identified any policy or process that the NGPC contradicted. There is nothing in the Guidebook that requires the NGPC to wait for or otherwise seek GNSO (Generic Names Supporting Organization) input before considering GAC (Governmental Advisory Committee) advice on new gTLDs, nor is there anything in the Guidebook that requires the NGPC to provide a rationale for deciding not to wait for or seek GNSO (Generic Names Supporting Organization) input. The Guidebook makes clear that ICANN (Internet Corporation for Assigned Names and Numbers) is required to consider GAC (Governmental Advisory Committee) advice "as soon as practicable." (Guidebook, Section 3.1.)

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requestor (see http://www.icann.org/en/groups/board/governance/reconsideration

(/en/groups/board/governance/reconsideration)) or that otherwise relate to Request 13-17. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 13-17, which shall be deemed a part of this Rationale and the full text of which can be found at http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-gccix-08jan14-en.pdf (/en/groups/board/governance/reconsideration/recommendation-gccix-08jan14-en.pdf) [PDF, 146 KB].

In terms of timing of the BGC's Recommendation, we note that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless practical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 14 December 2013. Due to the volume of Reconsideration Requests received within recent weeks and the intervening holidays, the first practical opportunity for the BGC to take action on this Request was on 8 January 2014; it was impractical for the BGC to consider the Request sooner. Upon making that determination, staff notified the requestor of the BGC's anticipated timing for the review of Request 13-17. Further, due to the volume of Reconsideration Requests and other pending issues before the NGPC, as well as scheduling conflicts due to the ICANN (Internet Corporation for Assigned Names and Numbers) public meeting in Buenos Aires in November 2013 and the intervening holidays, the first practical opportunity for the NGPC to consider this Request was on 30 January 2014.

Adopting the BGC's recommendation has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the

systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

b. Reconsideration Request 13-19, HOTREC

Whereas, HOTREC's ("HOTREC") Reconsideration Request 13-19, sought reconsideration of the New gTLD (generic Top Level Domain) Program Committee's ("NGPC") alleged failure (inaction) to stay HOTREC's community objection to the application for .HOTELS following the NGPC's 25 June 2013 resolution deferring the contracting process for .HOTELS pending a dialogue with the Governmental Advisory Committee (Advisory Committee) ("GAC (Governmental Advisory Committee)").

Whereas, the Board of Governance Committee ("BGC") considered the issues raised in Request 13-19.

Whereas, the BGC recommended that Request 13-19 be denied because HOTREC has not stated proper grounds for reconsideration and the New gTLD (generic Top Level Domain) Program Committee agrees.

Resolved (2014.01.30.NG02), the New gTLD (generic Top Level Domain) Program Committee adopts the BGC Recommendation on Reconsideration Request 13-19, which can be found at http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-hotrec-21jan14-en.pdf (/en/groups/board/governance/reconsideration/recommendation-hotrec-21jan14-en.pdf) [PDF, 127 KB].

Rationale for Resolution 2014.01.30.NG02

I. Brief Summary

Booking.com applied for .HOTELS, indicating that the string will be operated as a "closed" or "exclusive

access" registry. The Requester HOTREC filed a Community Objection against Booking.com's application, and lost. The Requester claims that the New gTLD (generic Top Level Domain) Program Committee's ("NGPC") failure to stay the Requester's Objection following the NGPC's resolution deferring the contracting process for "closed generic" TLDs (which includes .HOTELS) violated Article 4 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Article 1, Sections 2, 7, 8 and 9 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, and caused a breach of due process. The BGC concluded that the stated grounds are improper bases for reconsideration under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws because the Requester makes no argument and provides no evidence that the NGPC took an action or inaction without considering material information or as a result of reliance on false or inaccurate material information, which are the grounds for challenging Board conduct under the reconsideration process. The BGC further concluded that, even if these were proper bases for reconsideration, the stated grounds do not support reconsideration because there is no policy or process that requires the NGPC to stay objection proceedings while ICANN (Internet Corporation for Assigned Names and Numbers) considers and/or communicates with the GAC (Governmental Advisory Committee) regarding advice on new gTLDs. In sum, the BGC concluded that the Request has not stated proper grounds for reconsideration. The NGPC agrees.

II. Facts

A. Relevant Background Facts

Booking.com filed an application for .HOTELS, indicating that the string will be operated as a "closed" or "exclusive access" registry.

On 13 March 2013, Requester HOTREC filed a Community Objection with the ICC (International Chamber of Commerce)[4] to Booking.com's application asserting that there is "substantial opposition to the gTLD (generic Top Level Domain) application from a significant portion of the community to which the gTLD (generic Top Level Domain) string may be explicitly or implicitly targeted." (Applicant Guidebook ("Guidebook"), § 3.2.1; New gTLD (generic Top Level Domain) Dispute Resolution Procedure ("Procedure"), Art. 2(e).)

On 11 April 2013, the GAC (Governmental Advisory Committee) issued its Beijing Communiqué. Among other advice, the GAC (Governmental Advisory Committee) advised that "[f]or strings representing generic terms, exclusive registry access should serve a public interest goal." (Beijing Communiqué, Annex I, Pg. 11 available at http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf (/en/news/correspondence/gac-to-board-18apr13-en.pdf) [PDF, 156 KB]) The GAC (Governmental Advisory Committee) identified .HOTELS, among others, as a string that it considers to be a generic term and for which the applicant is currently proposing to provide exclusive registry access.[5] (See id.)

On 25 June 2013, the NGPC accepted the GAC (Governmental Advisory Committee)'s advice about applicants seeking to impose exclusive registry access for strings the GAC (Governmental Advisory Committee) deemed as generic terms, and directed staff to defer contracting with such applicants "pending a dialogue with the GAC (Governmental Advisory Committee)" regarding an appropriate definition

of "public interest goal" ("25 June 2013 Resolution").

On 1 July 2013, the Requester, citing the 25 June 2013 Resolution, asked the ICC (International Chamber of Commerce) to stay the Community Objection proceedings; Booking.com opposed the request for a stay.

On 2 July 2013, the NGPC approved revisions to the New gTLD (generic Top Level Domain) Registry Agreement including a provision prohibiting registry operators from limiting registrations in "generic term" registries exclusively to "a single person or entity and/or that person's or entity's 'Affiliates.'"

On 22 July 2013, the Requester sought leave from the ICC (International Chamber of Commerce) to file an additional submission in reply to Booking.com's Response; Booking.com opposed the request.

On 13 August 2013, the Panel denied the Requester's request for a stay and granted the request to file an additional submission.

On 19 August 2013, ICANN (Internet Corporation for Assigned Names and Numbers) inquired with applicants (including Booking.com) that applied for strings the GAC (Governmental Advisory Committee) identified as generic terms, as to whether they still intended to operate the string as an exclusive access registry.

On 20 August 2013, the Requester filed its additional submission with the Panel, noting the 25 June 2013 Resolution; Booking.com responded.

On 4 September 2013, Booking.com informed ICANN (Internet Corporation for Assigned Names and Numbers) that, although its application currently states that .HOTELS will be operated as an exclusive access registry, Booking.com will not operate .HOTELS as an exclusive access registry.

On 28 September 2013, the NGPC adopted a resolution that allows applicants that do not plan to operate as an exclusive access registry, and that are prepared to enter into the Registry Agreement as approved (which prohibits exclusive registry access for generic strings), to move forward with the contracting process ("28 September 2013 Resolution").

On 9 October 2013, ICANN (Internet Corporation for Assigned Names and Numbers) announced that, based on the 28 September 2013 Resolution, applicants that have confirmed they no longer intend to operate the applied-for string as an exclusive access registry (which includes .HOTELS) will be asked to submit a change request to align their applications and intent. Once the application change request has been approved by ICANN (Internet Corporation for Assigned Names and Numbers) and the application becomes eligible, the applicants will be invited to the contracting process in order of priority number.

On 19 November 2013, the Panel rendered an "Expert Determination" in favor of Booking.com.

On 4 December 2013, the Requester filed Request 13-19.

B. Requester's Claims

The Requester claims that the NGPC improperly failed to stay the Requester's Objection to Booking.com's application following the 25 June 2013 Resolution. Specifically, the Requester contends that the NGPC violated Article 4 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Article 1, Sections 2, 7, 8 and 9 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws by not complying with the following principles of international law: (i) the right to adversarial proceedings; (ii) the right to equality of arms; and (iii) the right to fairness in the proceedings by way of the administration of evidence.

III. Issues

The issue for reconsideration is whether the NGPC's purported failure to take appropriate action by not staying the Requester's Objection to Booking.com's application following the 25 June 2013 Resolution supports reconsideration.

IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 13-19 and finds the analysis sound.[6]

V. Analysis and Rationale

A. The NGPC's Failure to Stay the Requester's Objection Does Not Support Reconsideration of a Board Action or Inaction.

The BGC concluded, and the NGPC agrees, that NGPC's failure to stay the Requester's Objection following the 25 June 2013 Resolution is not a proper basis for reconsideration under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws. The Requester contends the NGPC's alleged inaction violated ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws. The BGC noted that a challenge of a Board action or inaction must be based upon the Board taking an action or inaction without consideration of material information or as a result of the Board's reliance on false or inaccurate material information.[7] (Bylaws, Art. IV, § 2.2.) The Requester makes no argument and provides no evidence that the NGPC took an action or inaction without considering material information or as a result of reliance on false or inaccurate material information.

Even if the Requester's claims were proper bases for reconsideration, the stated grounds are not well founded in that there is no policy or process that requires the NGPC to stay objection proceedings while ICANN (Internet Corporation for Assigned Names and Numbers) considers and/or communicates with the GAC (Governmental Advisory Committee) regarding advice on new gTLDs. The Guidebook provides that the "receipt of GAC (Governmental Advisory Committee) advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process)." (Guidebook, Section 3.1.) The NGPC's 25 June 2013 Resolution directed staff to defer moving forward with the contracting process for applicants seeking to

operate exclusive access registries with strings representing generic terms (such as .HOTELS) pending further communication with the GAC (Governmental Advisory Committee).

The BGC further concluded, and the NGPC agrees, that there is no support for the Requester's claim that its due process rights were somehow violated by the NGPC's failure to stay the objection proceedings. The Requester claims that it was not given the opportunity to object to Booking.com's application in its final version as a result of the NGPC's purported inaction. The Requester also claims that the NGPC's "actions/inaction related to 'closed-generic' TLD (Top Level Domain) Applications misled the Expert in rendering her determination and led to an unfair determination." The BGC noted that the Requester raised the purported implications of the 25 June 2013 Resolution on the Requester's Objection with the Panel and was granted leave to file an additional submission with the Panel following the Resolution and the NGPC's approval of the revised New gTLD (generic Top Level Domain) Agreement. The Requester noted that Specification 11 of the revised agreement prohibited strings representing generic terms from imposing eligibility criteria for registering names in the gTLD (generic Top Level Domain) that limit registrations exclusively to "a single person or entity and/or that person's or entity's 'Affiliates.'" The Requester suggested to the Panel that the revisions "cast considerable doubt" on whether Booking.com will be able operate .HOTELS as a closed gTLD (generic Top Level Domain). Based on the Requester's assertions, the Panel determined:

> It is accordingly far from certain that [Booking.com] would be able to exclude members of the Hotel Community from registering domain names in '.HOTELS' and cause the alleged detriment the Objector foresees.

(Expert Determination, Pgs. 23-24, ¶ 8.48.) The Requester's contentions are unsupported in that it was Requester's representations upon which the Panel relied. Thus, the BGC concluded that there is no support for the Requester's claim that its due process rights were violated by the NGPC's failure to stay the objection proceedings. Regardless of whether Booking.com's application for .HOTELS proceeded as a closed gTLD (generic Top Level Domain), the Panel determined that the Requester was simply unable to satisfy its burden of proving a likelihood of material detriment to prevail on its Objection.

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requestor (see http://www.icann.org/en/groups/board/governance/reconsideration (/en/groups/board/governance/reconsideration)) or that otherwise relate to Request 13-19. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 13-19, which shall be deemed a part of this Rationale and the full text of which can be found at http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-hotrec-21jan14-en.pdf (/en/groups/board/governance/reconsideration/recommendation-hotrec-21jan14-en.pdf) [PDF, 127 KB].

In terms of timing of the BGC's Recommendation, we note that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless practical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 3 January 2014. Due to the volume of Reconsideration Requests received within recent weeks and the intervening holidays, the first practical opportunity for the BGC to take action on this Request was on 21 January 2014; it was impractical for the BGC to consider the Request sooner. Upon making that determination, staff notified the requestor of the BGC's anticipated timing for the review of Request 13-19.

Adopting the BGC's recommendation has no financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

c. Discussion of Report on String Confusion Expert Determinations

No resolution taken.

Published on 3 February 2014

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[1] Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval positively affects ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

[2] Requester is not challenging a staff action. (Request, Section 1, Pg. 1.) To challenge a staff action, Requester would need to demonstrate that the staff action violated an established policy or process. (Bylaws, Art. IV, § 2.2.) Requester has made no such claims.

[3] Requester is also not claiming that the 4 June 2013 Resolution was the result of the NGPC's reliance on false or inaccurate material information.

[4] International Centre for Expertise of the International Chamber of Commerce.

[5] The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee)'s advice on public policy matters in the formulation and adoption of policies. (Bylaws, Art. XI, § 2.1.j.) In the context of the New gTLD (generic Top Level Domain) Program, there are also specific procedures pursuant to which the GAC (Governmental Advisory Committee) may provide advice to ICANN (Internet Corporation for Assigned Names and Numbers) on new gTLDs. (Guidebook, Section 3.1.)

[6] Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

[7] The Requester is not challenging a staff action. (Request, Section 2, Pg. 3.) To challenge a staff action, Requester would need to demonstrate that the staff action violated an established policy or process. (Bylaws, Art. IV, § 2.2.) While the Requester asserts that the Panel improperly considered and relied upon hypothetical or future events in its Determination, the Request is not based on these claims.

Ex. R-21

RESPONDENT'S EXHIBIT

COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSSES
STATUS UPDATE – 18 MAY 2021

ACTIVE COOPERATIVE ENGAGEMENT PROCESS (CEP) PROCEEDINGS[1]

Request Date	Requestor(s)	Subject Matter
11-May-2021	Dot Hotel Limited and Domain Venture Partners PCC Limited	.HOTEL

RECENTLY CLOSED COOPERATIVE ENGAGEMENT PROCESS (CEP) PROCEEDINGS

Request Date	Requestor(s)	Subject Matter	IRP Filing Deadline
17-Feb-2014	GCCIX, W.L.L.	.GCC	1-Jun-2021
3-Dec-2020	Merck Registry Holdings, Inc. and Merck KGaA	.MERCK	N/A (Withdrawn)

[1] The Cooperative Engagement Process (CEP) is a process voluntarily invoked by a complainant prior to the filing of an Independent Review Process (IRP) for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. (*See* Bylaws, Art. 4 § 4.3(e).) The requesting party may invoke the CEP by providing written notice to ICANN, noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue. Further information regarding the CEP is available at: https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf.

COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSSES
STATUS UPDATE – 18 May 2021

ACTIVE INDEPENDENT REVIEW PROCESS (IRP) PROCEEDINGS[2]

Date ICANN Received Notice of IRP	Date IRP Commenced by ICDR	Requestor	Subject Matter	Status
14-Nov-2018	26-Nov-2018	Afilias Domains No. 3 Limited https://www.icann.org/resources/pages/irp-afilias-v-icann-2018-11-30-en	.WEB	Panel Selection: Full Panel confirmed on 20 August 2019. Materials: Written submissions, Declaration(s), and Scheduling Order(s) are posted here. Hearing(s): Merits hearing took place on 3-11 August 2020.
18-Nov-2019	16-Dec-2019	Fegistry, LLC, Minds + Machines Group, Ltd., Radix Domain Solutions Pte. Ltd., and Domain Ventures Partners PCC Limited https://www.icann.org/resources/pages/irp-fegistry-et-al-v-icann-hotel-2019-12-20-en	.HOTEL	Panel Selection: Two Panelists have been selected. Materials: Written submissions, Declaration(s), and Scheduling Order(s) are posted here. Hearing(s): No hearings are currently scheduled.
25-Feb-2020	26-Feb-2020	Namecheap, Inc. https://www.icann.org/resources/pages/irp-namecheap-v-icann-2020-03-03-en	.ORG .INFO .BIZ	Panel Selection: Full Panel confirmed on 14 July 2020. Materials: Written submissions, Declaration(s), and Scheduling Order(s) are posted here. Hearing(s): No hearings are currently scheduled.

[2] IRP is intended to hear and resolve Disputes for the following purposes: (i) ensure that ICANN does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws; (ii) empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in § 4.3(b)(i)); (iii) ensure that ICANN is accountable to the global Internet community and Claimants; (iv) address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract (as defined in Section 16.3(a)); (v) provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation; (vi) reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations, Advisory Committees, and the global Internet community in connection with policy development and implementation; (vii) secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes; (viii) lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction; and (ix) provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions. (*See* Bylaws, Art. 4, § 4.3)

COOPERATIVE ENGAGEMENT AND INDEPENDENT REVIEW PROCESSSES
STATUS UPDATE – 18 May 2021

RECENTLY CLOSED INDEPENDENT REVIEW PROCESS (IRP) PROCEEDINGS

Date ICANN Received Notice of IRP	Date IRP Commenced by ICDR	Requestor	Subject Matter	Date IRP Closed	Date of Board Consideration of IRP Panel's Final Declaration[3]
There are no recently closed IRPs.					

[3] IRP proceedings initiated on or after 1 October 2016 are subject to the Bylaws as of 1 October 2016: IRP proceedings initiated Pursuant to Article 4, § 4.3(x)(iii)(A) of the ICANN Bylaws, "[w]here feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision of the public record based on an expressed rationale. The decision by the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law. (https://www.icann.org/resources/pages/governance/bylaws-en/#article4)

Ex. R-22

RESPONDENT'S EXHIBIT

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
Independent Review Panel

CASE #50 2013 001083

FINAL DECLARATION

In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),

Between: **DotConnectAfrica Trust**;
("Claimant" or "DCA Trust")

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 2005, U.S.A.

And

Internet Corporation for Assigned Names and Numbers (ICANN);
("Respondent" or "ICANN")

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

IRP Panel

Prof. Catherine Kessedjian
Hon. William J. Cahill (Ret.)
Babak Barin, *President*

I. BACKGROUND

1. DCA Trust is non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya.

2. DCA Trust was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and not for the public good.

3. In March 2012, DCA Trust applied to ICANN for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"), an internet resource available for delegation under that program.

4. ICANN is a non-profit corporation established on 30 September 1998 under the laws of the State of California, and headquartered in Marina del Rey, California, U.S.A. According to its Articles of Incorporation, ICANN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions and local law.

5. On 4 June 2013, the ICANN Board New gTLD Program Committee ("NGPC") posted a notice that it had decided not to accept DCA Trust's application.

6. On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee ("BGC"), which denied the request on 1 August 2013.

7. On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN's Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process ("CEP") to try and resolve the issues relating to DCA Trust's application. Despite several meetings, no resolution was reached.

8. On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3 of ICANN's Bylaws.

9. In an effort to safeguard its rights pending the ongoing constitution of the IRP Panel, on 22 January 2014, DCA Trust wrote to ICANN requesting that it immediately cease any further processing of all applications for the delegation of the .AFRICA gTLD, failing which DCA Trust would seek emergency relief under Article 37 of the ICDR Rules.

10. DCA Trust also indicated that it believed it had the right to seek such relief because there was no standing panel as anticipated in the Supplementary Procedures for ICANN Independent Review Process ("Supplementary Procedures"), which could otherwise hear requests for emergency relief.

11. In response, on 5 February 2014, ICANN wrote:

> Although ICANN typically is refraining from further processing activities in conjunction with pending gTLD applications where a competing applicant has a pending reconsideration request, ICANN does not intend to refrain from further processing of applications that relate in some way to pending independent review proceedings. In this particular instance, ICANN believes that the grounds for DCA's IRP are exceedingly weak, and that the decision to refrain from the further processing of other applications on the basis of the pending IRP would be unfair to others.

12. In its Request for Emergency Arbitrator and Interim Measures of Protection subsequently submitted on 28 March 2014, DCA Trust pleaded, *inter alia*, that, in an effort to preserve its rights, in January 2014, DCA requested that ICANN suspend its processing of applications for .AFRICA during the pendency of this proceeding. ICANN, however, summarily refused to do so.

13. DCA Trust also submitted that "on 23 March 2014, DCA became aware that ICANN intended to sign an agreement with DCA's competitor (a South African company called ZACR) on 26 March 2014 in Beijing […] Immediately upon receiving this information, DCA contacted ICANN and asked it to refrain from signing the agreement with ZACR in light of the fact that this proceeding was still pending. Instead, according to ICANN's website, ICANN *signed its agreement with ZACR the very next day, two days ahead of plan, on 24 March instead of 26 March*."

14. According to DCA Trust, that same day, "ICANN then responded to DCA's request by presenting the execution of the contract as a *fait accompli*, arguing that DCA should have sought to stop ICANN from proceeding with ZACR's application, as ICANN had already informed DCA of its intention [to] ignore its obligations to participate in this proceeding in good faith."

15. DCA Trust also submitted that on 25 March 2014, as per ICANN's email to the ICDR, "ICANN for the first time informed DCA that it would accept the application of Article 37 of the ICDR Rules to this proceeding contrary to the express provisions of the Supplementary Procedures of ICANN has put in place for the IRP Process."

16. In its Request, DCA Trust argued that it "is entitled to an accountability proceeding with legitimacy and integrity, with the capacity to provide a meaningful remedy. […] DCA has requested the opportunity to compete for rights to .AFRICA pursuant to the rules that ICANN put into place. Allowing ICANN to delegate .AFRICA to DCA's only competitor – which took actions that were instrumental in the process leading to ICANN's decision to reject DCA's application – would eviscerate the very purpose of this proceeding and deprive DCA of its rights under ICANN's own constitutive instruments and international law."

17. Finally, among other things, DCA Trust requested the following interim relief:

> a. An order compelling *ICANN to refrain from any further steps toward delegation of the .AFRICA gTLD*, including but not limited to execution or assessment of pre-delegation testing, negotiations or discussions relating to delegation with the entity ZACR or any of its officers or agents; […]

18. On 24 April and 12 May 2014, the Panel issued Procedural Order No. 1, a Decision on Interim Measures of Protection, and a list of questions for the Parties to answer.

19. In its 12 May 2014 Decision on Interim Measures of Protection, the Panel required ICANN to "immediately refrain from any further processing of any application for .AFRICA until [the Panel] heard the merits of DCA Trust's Notice of Independent Review Process and issued its conclusions regarding the same".

20. In the Panel's unanimous view, among other reasons, it would have been "unfair and unjust to deny DCA Trust's request for interim relief when the need for such a relief…[arose] out of ICANN's failure to follow its own Bylaws and procedures." The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

21. On 27 May and 4 June 2015, the Panel issued Procedural Order No. 2 and a Decision on ICANN's request for Partial Reconsideration of certain portions of its Decision on Interim Measures of Protection.

22. In its 4 June 2014 Decision on ICANN's request for Partial Reconsideration, the Panel unanimously concluded that ICANN's request must be denied. In that Decision, the Panel observed:

> 9. After careful consideration of the Parties' respective submissions, the Panel is of the unanimous view that ICANN's Request must be denied for two reasons.
>
> 10. First, there is nothing in ICANN's Bylaws, the International Dispute Resolution Procedures of the ICDR effective as at 1 June 2009 or the Supplementary Procedures for ICANN Independent Review Process that in any way address the Panel's ability to address ICANN's Request. The Panel has not been able to find any relevant guidance in this regard in any of the above instruments and ICANN has not pointed to any relevant provision or rule that would support its argument that the Panel has the authority to reconsider its Decision of 12 May 2014.
>
> 11.Moreover, ICANN has not pointed to any clerical, typographical or computation error or shortcoming in the Panel's Decision and it has not requested an interpretation of the Panel's Decision based on any ambiguity or vagueness. To the contrary, ICANN has asked the Panel to reconsider its prior findings with respect to certain references in its Decision that ICANN disagrees with, on the basis that those references are in ICANN's view, inaccurate.
>
> 12. Second, even if the Panel were to reconsider based on any provision or rule available, its findings with respect to those passages complained of by ICANN as being inaccurate in its Decision – namely paragraphs 29 to 33 – after deliberation, the Panel would still conclude that ICANN has failed to follow its own Bylaws as more specifically explained in the above paragraphs, in the context of addressing which of the Parties should be viewed as responsible for the delays associated with DCA Trust's Request for Interim Measures of Protection. It is not reasonable to construe the By-law proviso for consideration by a provider-appointed *ad hoc* panel when a standing panel is not in place as relieving ICANN indefinitely of forming the required standing panel. Instead, the provider appointed panel is properly viewed as an interim procedure to be used before ICANN has a chance to form a standing panel. Here, more than a year has elapsed, and ICANN has offered no explanation why the standing panel has not been formed, nor indeed any indication that formation of that panel is in process, or has begun, or indeed even is planned to begin at some point.

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

23. On 14 August 2014, the Panel issued a Declaration on the IRP Procedure ("2014 Declaration") pursuant to which it (1) ordered a reasonable documentary exchange, (2) permitted the Parties to benefit from additional filings and supplementary briefing, (3) allowed a video hearing, and (4) permitted both Parties at the hearing to

challenge and test the veracity of any written statements made by witnesses.

The Panel also concluded that its Declaration on the IRP and its future Declaration on the Merits of the case were binding on the Parties. In particular, the Panel decided:

> 98. Various provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.
>
> […]
>
> 100. Section 10 of the Supplementary Procedures resembles Article 27 of the ICDR Rules. Whereas Article 27 refers to "Awards", section 10 refers to "Declarations". Section 10 of the Supplementary Procedures, however, is silent on whether Declarations made by the IRP Panel are "final and binding" on the parties.
>
> 101. As explained earlier, as per Article IV, Section 3, paragraph 8 of the Bylaws, the Board of Directors of ICANN has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP set out in section 3. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures. These Rules have been supplemented with the Supplementary Procedures.
>
> 102. This is clear from two different parts of the Supplementary Procedures. First, in the preamble, where the Supplementary Procedures state that: "These procedures supplement the International Centre for Dispute Resolution's International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws".
>
> 103. And second, under section 2 entitled (Scope), that states that the "ICDR will apply these Supplementary Procedures, in addition to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws". It is therefore clear that ICANN intended the operating rules and procedures for the independent review to be an international set of arbitration rules supplemented by a particular set of additional rules.
>
> 104. There is also nothing inconsistent between section 10 of the Supplementary Procedures and Article 27 of the ICDR Rules.
>
> 105. One of the hallmarks of international arbitration is the binding and final nature of the decisions made by the adjudicators. Binding arbitration is the essence of what the ICDR Rules, the ICDR itself and its parent, the American Arbitration Association, offer. The selection of the ICDR Rules as the baseline set of procedures for IRP's, therefore, points to a binding adjudicative process.

> 106. Furthermore, the process adopted in the Supplementary Procedures is an adversarial one where counsel for the parties present competing evidence and arguments, and a panel decides who prevails, when and in what circumstances. The panellists who adjudicate the parties' claims are also selected from among experienced arbitrators, whose usual charter is to make binding decisions.
>
> 107. The above is further supported by the language and spirit of section 11 of ICANN's Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory.
>
> […]
>
> 110. ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.
>
> 111. The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor; and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.
>
> […]
>
> 115. Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, *and* b) the IRP process touted by ICANN as the "ultimate guarantor" of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN. [Underlining is from the original decision.]

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

24. On 5 September and 25 September 2014, the Panel issued Procedural Orders No. 3 and No. 4. In Procedural Order No. 3, the Panel notably required the Parties to complete their respective filing of briefs in accordance with the IRP Procedure Guidelines by 3 November 2014 for DCA Trust and 3 December 2014 for ICANN.

25. In Procedural Order No. 4 dated 25 September 2014, the Panel reached a decision regarding document production issues.

26. On 3 November 2014 and 3 December 2014, the Parties filed their Memorial and Response Memorial on the Merits in accordance with the timetable set out in Procedural Order No. 3.

27. On 26 February 2015, following the passing away of the Hon. Richard C. Neal (Ret.) and confirmation by the ICDR of his replacement arbitrator, the Hon. William J. Cahill (Ret.), ICANN requested that this Panel consider revisiting the part of this IRP relating to the issue of hearing witnesses addressed in the Panel's 2014 Declaration.

28. In particular, ICANN submitted that given the replacement of Justice Neal, Article 15.2 of the ICDR Rules together with the Supplementary Procedures permitted this IRP to in its sole discretion, determine "whether all or part" of this IRP should be repeated.

29. According to ICANN, while it was not necessary to repeat all of this IRP, since the Panel here had exceeded its authority under the Supplementary Procedures when it held in its 2014 Declaration that it could order live testimony of witnesses, the Panel should then at a minimum consider revisiting that issue.

30. According to ICANN, panelists derived "their powers and authority from the relevant applicable rules, the parties' requests, and the contractual provisions agreed to by the Parties (in this instance, ICANN's Bylaws, which establish the process of independent review). The authority of panelists is limited by such rules, submissions and agreements."

31. ICANN emphasized that "compliance with the Supplementary Procedures [was] critical to ensure predictability for ICANN, applicants for and objectors to gTLD applications, and the entire ICANN community…", and while "ICANN [was] committed to fairness and accessibility…ICANN [was] also committed to predictability and the like treatment of all applicants. For this Panel to change the rules

for this single applicant [did] not encourage any of these commitments."

32. ICANN also pleaded that, DCA specifically agreed to be bound by the Supplementary Procedures when it initially submitted its application, the Supplementary Procedures apply to both ICANN and DCA alike, ICANN is now in the same position when it comes to testing witness declarations and finally, in alternative dispute resolution proceedings where cross examination of witnesses is allowed, parties often waive cross-examination.

33. Finally, ICANN advanced that:

> [T]he Independent Review process is an alternative dispute resolution procedure adapted to the specific issues to be addressed pursuant to ICANN's Bylaws. The process cannot be transformed into a full-fledged trial without amending ICANN's Bylaws and the Supplementary Procedures, which specifically provide for a hearing that includes counsel argument only. Accordingly, ICANN strongly urges the Panel to follow the rules for this proceeding and to declare that the hearing in May will be limited to argument of counsel.

34. On 24 March 2015, the Panel issued its Declaration on ICANN's Request for Revisiting of the 14 August Declaration on the IRP Procedure following the Replacement of Panel Member. In that Declaration, the newly constituted Panel unanimously concluded that it was not necessary for it to reconsider or revisit its 2014 Declaration.

35. In passing and not at all as a result of any intended or inadvertent reconsideration or revisiting of its 2014 Declaration, the Panel referred to Articles III and IV of ICANN's Bylaws and concluded:

> Under the general heading, Transparency, and title "Purpose", Section 1 of Article III states: "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." Under the general heading, Accountability and Review, and title "Purpose", Section 1 of Article IV reads: "In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws." In light of the above, and again in passing only, it is the Panel's unanimous view, that the filing of fact witness statements (as ICANN has done in this IRP) and limiting telephonic or in-person hearings to argument only is inconsistent with the objectives setout in Articles III and IV setout above.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

36. On 24 March and 1 April 2015, the Panel rendered Procedural Orders No. 5 and 6, in which, among other things, the Panel recorded the Parties' "agreement that there will no cross-examination of any of the witnesses" at the hearing of the merits.

37. On 20 April 2015, the Panel rendered its Third Declaration on the IRP Procedure. In that Declaration, the Panel decided that the hearing of this IRP should be an in-person one in Washington, D.C. and required all three witnesses who had filed witness statements to be present at the hearing.

38. The Panel in particular noted that:

> 13. […] Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, an accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.
>
> 14. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board […], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.
>
> 15. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:
>
> > "Applicant hereby releases ICANN […] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN […] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM."
>
> Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.
>
> 16. Accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

[…]

21. In order to keep the costs and burdens of independent review as low as possible, ICANN's Bylaws, in Article IV, Section 3 and Paragraph 12, suggests that the IRP Panel conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible, and where necessary the IRP Panel may hold meetings by telephone. Use of the words "should" and "may" versus "shall" are demonstrative of this point. In the same paragraph, however, ICANN's Bylaws state that, "in the unlikely event that a telephonic or in-person hearing is convened, the hearing *shall* be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance."

22. The Panel finds that this last sentence in Paragraph 12 of ICANN's Bylaws, unduly and improperly restricts the Panel's ability to conduct the "independent review" it has been explicitly mandated to carryout in Paragraph 4 of Section 3 in the manner it considers appropriate.

23. How can a Panel compare contested actions of the Board and declare whether or not they are consistent with the provisions of the Articles of Incorporation and Bylaws, without the ability to fact find and make enquiries concerning those actions in the manner it considers appropriate?

24. How can the Panel for example, determine, if the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, or exercised independent judgment in taking decisions, if the Panel cannot ask the questions it needs to, in the manner it needs to or considers fair, just and appropriate in the circumstances?

25. How can the Panel ensure that the parties to this IRP are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case with respect to the mandate the Panel has been given, if as ICANN submits, "ICANN's Bylaws do not permit any examination of witnesses by the parties or the Panel during the hearing"?

26. The Panel is unanimously of the view that it cannot. The Panel is also of the view that any attempt by ICANN in this case to prevent it from carrying out its independent review of ICANN Board's actions in the manner that the Panel considers appropriate under the circumstances deprives the accountability and review process set out in the Bylaws of any meaning.

27. ICANN has filed two 'Declarations' in this IRP, one signed by Ms. Heather Dryden, a Senior Policy Advisor at the International Telecommunications Policy and Coordination Directorate at Industry Canada, and Chair of ICANN Government Advisory Committee from 2010 to 2013, and the other by Mr. Cherine Chalaby, a member of the Board of Directors of ICANN since 2010. Mr. Chalaby is also, since its inception, one of three members of the Subcommittee on Ethics and Conflicts of ICANN's Board of Governance Committee.

28. In their respective statements, both individuals have confirmed that they "have personal knowledge of the matters set forth in [their] declaration and [are] competent to testify to these matters *if called as a witness*."

[…]

29. In his Declaration, Mr. Chalaby states that "all members of the NGPC were asked to and did specifically affirm that they did not have a conflict of interest related to DCA's application for .AFRICA when they voted on the GAC advice. In addition, the NGPC asked the BGC to look into the issue further, and the BGC referred the matter to the Subcommittee. After investigating the matter, the Subcommittee concluded that Chris Disspain and Mike Silber did not have conflicts of interest with respect to DCA's application for .AFRICA."

30. The Panel considers it important and useful for ICANN's witnesses, and in particular, Mr. Chalaby as well as for Ms. Sophia Bekele Eshete to be present at the hearing of this IRP.

31. While the Panel takes note of ICANN's position depicted on page 2 of its 8 April 2015 letter, the Panel nonetheless invites ICANN to reconsider its position.

32. The Panel also takes note of ICANN's offer in that same letter to address written questions to its witnesses before the hearing, and if the Panel needs more information after the hearing to clarify the evidence presented during the hearing. The Panel, however, is unanimously of the view that this approach is fundamentally inconsistent with the requirements in ICANN's Bylaws for it to act openly, transparently, fairly and with integrity.

33. As already indicated in this Panel's August 2014 Declaration, analysis of the propriety of ICANN's decisions in this case will depend at least in part on evidence about the intentions and conduct of ICANN's top personnel. Even though the Parties have explicitly agreed that neither will have an opportunity to cross-examine the witnesses of the other in this IRP, the Panel is of the view that ICANN should not be allowed to rely on written statements of its top officers attesting to the propriety of their actions and decisions without an opportunity for the Panel and thereafter DCA Trust's counsel to ask any follow-up questions arising out of the Panel's questions of ICANN's witnesses. The same opportunity of course will be given to ICANN to ask questions of Ms. Bekele Eshete, after the Panel has directed its questions to her.

34. The Parties having agreed that there will be no cross-examination of witnesses in this IRP, the procedure for asking witnesses questions at the hearing shall be as follows:

a) The Panel shall first have an opportunity to ask any witness any questions it deems necessary or appropriate;
b) Each Party thereafter, shall have an opportunity to ask any follow-up questions the Panel permits them to ask of any witness.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

39. On 27 April and 4 May 2015, the Panel issued its Procedural Order No. 7 and 8, and on that last date, it held a prehearing conference call with the Parties as required by the ICDR Rules. In Procedural

Order No. 8, the Panel set out the order of witness and party presentations agreed upon by the Parties.

40. On 18 May 2015, and in response to ZA Central Registry's (ZACR) request to have two of its representatives along with a representative from the African Union Commission (AUC) attend at the IRP hearing scheduled for 22 and 23 May 2015 in Washington, D.C., the Panel issued its Procedural Order No. 9, denying the requests made by ZACR and AUC to be at the merits hearing of this matter in Washington, D.C.

41. In a letter dated 11 May 2015, ZACR and AUC's legal representative had submitted that both entities had an interest in this matter and it would be mutually beneficial for the IRP to permit them to attend at the hearing in Washington, D.C.

42. ZACR's legal representative had also argued that "allowing for interests of a materially affected party such as ZACR, the successful applicant for the dotAfrica gTLD, as well as broader public interests, to be present enhances the legitimacy of the proceedings and therefore the accountability and transparency of ICANN and its dispute resolution procedures."

43. For the Panel, Article 20 of the ICDR Rules, which applied in this matter, stated that the hearing of this IRP was "private unless the parties agree otherwise". The Parties in this IRP did not consent to the presence of ZACR and AUC. While ICANN indicated that it had no objection to the presence of ZACR and AUC, DCA Trust was not of the same view. Therefore, ZACR and AUC were not permitted to attend.

44. The in-person hearing of the merits of this IRP took place on 22 and 23 May 2015 at the offices of Jones Day LLP in Washington, D.C. All three individuals who had filed witness statements in this IRP, namely Ms. Sophia Bekele Eshete, representative for DCA Trust, Ms. Heather Dryden and Mr. Cherine Chalaby, representatives for ICANN, attended in person and answered questions put to them by the Panel and subsequently by the legal representatives of both Parties. In attendance at the hearing was also Ms. Amy Stathos, Deputy General Counsel of ICANN.

45. The proceedings of the hearing were reported by Ms. Cindy L. Sebo of TransPerfect Legal Solutions, who is a Registered Merit Real-Time Court Reporter.

46. On the last day of the hearing, DCA Trust was asked by the Panel to clearly and explicitly articulate its prayers for relief. In a document entitled Claimant's Final Request for Relief which was signed by the Executive Director of DCA Trust, Ms. Sophia Bekele and marked at the hearing as Hearing Exhibit 4, DCA Trust asked the Panel to:

> Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB) by:
>
> - Discriminating against DCA and wrongfully assisting the AUC and ZACR to obtain rights to the .AFRICA gTLD;
> - Failing to apply ICANN's procedures in a neutral and objective manner, with procedural fairness when it accepted the GAC Objection Advice against DCA; and
> - Failing to apply its procedures in a neutral and objective manner, with procedural fairness when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA;
>
> And to declare that:
>
> - DCA is the prevailing party in this IRP and, consequently, shall be entitled to its costs in this proceeding; and
> - DCA is entitled to such other relief as the Panel may find appropriate under the circumstances described herein.
>
> Recommend, as a result of each of these violations, that:
>
> - ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR;
> - ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA; and
> - ICANN compensate DCA for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

47. In its response to DCA Trust's Final Request for Relief, ICANN submitted that, "the Panel should find that no action (or inaction) of the ICANN Board was inconsistent with the Articles of Incorporation or Bylaws, and accordingly none of DCA's requested relief is appropriate."

48. ICANN also submitted that:

> DCA urges that the Panel issue a declaration in its favor…and also asks that the Panel declare that DCA is the prevailing party and entitled to its costs. Although ICANN believes that the evidence does not support the

> declarations that DCA seeks, ICANN does not object to the form of DCA's requests.
>
> At the bottom of DCA's Final Request for Relief, DCA asks that the Panel recommend that ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR, and that ICANN permit DCA's application to proceed and give DCA no less than 18 additional months from the date of the Panel's declaration to attempt to obtain the requisite support of the countries in Africa. ICANN objects to that appropriateness of these requested recommendations because they are well outside the Panel's authority as set forth in the Bylaws.
>
> […]
>
> Because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from recommending how the Board should then proceed in light of the Panel's declaration. Pursuant to Paragraph 12 of that same section of the Bylaws, the Board will consider the Panel's declaration at its next meeting, and if the Panel has declared that the Board's conduct was inconsistent with the Articles or the Bylaws, the Board will have to determine how to act upon the opinion of the Panel.
>
> By way of example only, if the Panel somehow found that the unanimous NGPC vote on 4 June 2013 was not properly taken, the Board might determine that the vote from that meeting should be set aside and that the NGPC should consider the issue anew. Likewise, if the Panel were to determine that the NGPC did not adequately consider the GAC advice at [the] 4 June 2013 meeting, the Board might require that the NGPC reconsider the GAC advice.
>
> In all events, the Bylaws mandate that the Board has the responsibility of fashioning the appropriate remedy once the Panel has declared whether or not it thinks the Board's conduct was inconsistent with ICANN's Articles of Incorporation and Bylaws. The Bylaws do not provide the Panel with the authority to make any recommendations or declarations in this respect.

49. In response to ICANN's submissions above, on 15 June 2015, DCA Trust advanced that the Panel had already ruled that its declaration on the merits will be binding on the Parties and that nothing in ICANN's Bylaws, the Supplementary Procedures or the ICDR Rules applicable in these proceedings prohibits the Panel from making a recommendation to the ICANN Board of Directors regarding an appropriate remedy. DCA Trust also submitted that:

> According to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation. Indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself suggested that DCA could seek relief through ICANN's accountability

> mechanisms or, in other words, the Reconsideration process and the Independent Review Process. If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

50. On 25 June 2015, the Panel issued its Procedural Order No. 10, directing the Parties to by 1 July 2015 simultaneously file their detailed submissions on costs and their allocation in these proceedings.

51. The additional factual background and reasons in the above decisions, procedural orders and declarations rendered by the Panel are hereby adopted and incorporated by reference in this Final Declaration.

52. On 1 and 2 July 2015, the Parties filed their respective positions and submissions on costs.

II. BRIEF SUMMARY OF THE PARTIES' POSITIONS ON THE MERITS & REQUEST FOR RELIEF

53. According to DCA Trust and as elaborated on in it's Memorial on Merits dated 3 November 2014, the central dispute between it and ICANN in this IRP may be summarized as follows:

> 32. By preventing DCA'S application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

54. According to DCA Trust, among other things, "instead of functioning as a disinterested regulator of a fair and transparent gTLD application process, ICANN used its authority and oversight over that process to assist ZACR and to eliminate its only competitor, DCA, from the process."

55. DCA Trust also advanced that, "as a result, ICANN deprived DCA of the right to compete for .AFRICA in accordance with the rules ICANN established for the new gTLD program, in breach of the Applicant Guidebook ("AGB") and ICANN's Articles of Incorporation and Bylaws."

56. In its 3 December 2014 Response to DCA's Memorial on the Merits, among other things, ICANN submitted that, "ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN also pleaded that it acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration."

57. ICANN advanced that, "DCA is using this IRP as a mean to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook."

58. ICANN also added that, "ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world."

59. In its Final Request for Relief filed on 23 May 2015, DCA Trust asked this Panel to:

> 1.Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB);
> 2.Declare that DCA Trust is the prevailing party in this IRP and, consequently entitled to its costs in this proceeding; and
> 3.Recommend as a result of the Board violations a course of action for the Board to follow going forward.

60. In its response letter of 1 June 2015, ICANN confirmed that it did not object to the form of DCA Trust's requests above, even though it believes that the evidence does not support the declarations that DCA Trust seeks. ICANN did, however, object to the appropriateness of the request for recommendations on the ground that they are outside of the Panel's authority as set forth in the Bylaws.

III. THE ISSUES RAISED AND THE PANEL'S DECISION

61. After carefully considering the Parties' written and oral submissions, perusing the three witness statements filed and hearing *viva voce* the testimonies of the witnesses at the in-person hearing of this IRP in Washington, D.C., the Panel answers the following four questions put to it as follows:

1. Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

Answer: Yes.

2. Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook (AGB)?

Answer: Yes.

3. Who is the prevailing party in this IRP?

Answer: DCA Trust

4. Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

Answer: ICANN, in full.

Summary of Panel's Decision

For reasons explained in more detail below, and pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

Finally, DCA Trust is the prevailing party in this IRP and ICANN is responsible for bearing, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

IV. ANALYSIS OF THE ISSUES AND REASONS FOR THE PANEL'S DECISION

1) Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

62. Before answering this question, the Panel considers it necessary to quickly examine and address the issue of "standard of review" as referred to by ICANN in its 3 December 2014 Response to DCA's Memorial on the Merits or the "law applicable to these proceedings" as pleaded by DCA Trust in its 3 November 2014 Memorial on the Merits.

63. According to DCA Trust:

> 30. The version of ICANN's Articles of Incorporation and its Bylaws in effect at the time DCA filed its Request for IRP applies to these proceedings. [Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (21 November 1998) and Bylaws of the Internet Corporation for Assigned Names and Numbers (11 April 2013)]. ICANN's agreement with the U.S. Department of Commerce, National Telecommunications & Information Administration ("NTIA"), the "Affirmation of Commitments," is also instructive, as it explains ICANN's obligations in light of its role as regulator of the Domain Name System ("DNS"). The standard of review is a *de novo* "independent review" of whether the actions of the Board violated the Bylaws, with focus on whether the Board acted without conflict of interest, with due diligence and care, and exercised independent judgment in the best interests of ICANN and its many stakeholders. (Underlining added).
>
> 31. All of the obligations enumerated in these documents are to be carried out *first* in conformity with "relevant principles of international law" and *second* in conformity with local law. As explained by Dr. Jack Goldsmith in his Expert Report submitted in *ICM v. ICANN*, the reference to "principles of international law" in ICANN's Articles of Incorporation should be understood to include both customary international law and general principles of law.

64. In response, ICANN submits that:

> 11. The IRP is a unique process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, but only to the extent that Board action was inconsistent with ICANN's Bylaws or Articles. This IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Bylaws or Articles. ICANN's Bylaws specifically identify the deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, focusing on:

> a. Did the Board act without conflict of interest in taking its decision?;
>
> b. Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
>
> c. Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
>
> 12. DCA disregards the plain language of ICANN's Bylaws and relies instead on the IRP Panel's declaration in a prior Independent Review proceeding, *ICM v. ICANN*. However, *ICM* was decided in 2010 under a previous version of ICANN's Bylaws. In its declaration, the *ICM* Panel explicitly noted that ICANN's then-current Bylaws "d[id] not specify or imply that the [IRP] process provided for s[hould] (or s[hould] not) accord deference to the decisions of the ICANN Board." As DCA acknowledges, the version of ICANN's Bylaws that apply to this proceeding are the version as amended in April 2013. The current Bylaws provide for the deferential standard of review set forth above. [Underlining is added]

65. For the following reasons, the Panel is of the view that the standard of review is a *de novo*, objective and independent one examining whether the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws.

66. ICANN is not an ordinary California nonprofit organization. Rather it has a large international purpose and responsibility to coordinate and ensure the stable and secure operation of the Internet's unique identifier systems.

67. Indeed, Article 4 of ICANN's Articles of Incorporation require ICANN to "operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." ICANN's Bylaws also impose duties on it to act in an open, transparent and fair manner with integrity.

68. ICANN's Bylaws (as amended on 11 April 2013) which both Parties explicitly agree that applies to this IRP, reads in relevant parts as follows:

> **ARTICLE IV: ACCOUNTABILITY AND REVIEW**
>
> **Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS**

> 1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
>
> […]
>
> 4. Requests for such independent review shall be referred to an Independent Review Process Panel […], which shall be charged with comparing contested actions of the Board to Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:
>
> a. did the Board act without conflict of interest in taking its decision?
> b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
> c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

69. Section 8 of the Supplementary Procedures similarly subject the IRP to the standard of review set out in subparagraphs a., b., and c., above, and add:

> If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the internet community and the global public interest, the requestor will have established proper grounds for review.

70. In the Panel's view, Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, a *de novo, objective and independent* accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

71. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with* comparing contested actions of the Board […], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

72. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

> Applicant hereby releases ICANN […] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN […] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM.

73. Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.

74. As previously decided by this Panel, such accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

75. Such accountability also requires, to use the words of the IRP Panel in the *Booking.com B.V. v. ICANN* (ICDR Case Number: 50-20-1400-0247), this IRP Panel to "objectively" determine whether or not the Board's actions are in fact consistent with the Articles of Incorporation, Bylaws and Guidebook, which this Panel, like the one in *Booking.com* "understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness."

76. The Panel therefore concludes that the "standard of review" in this IRP is a *de novo, objective and independent* one, which does not require any presumption of correctness.

77. With the above in mind, the Panel now turns it mind to whether or not the Board in this IRP acted or failed to act in a manner inconsistent

with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

DCA Trust's Position

78. In its 3 November 2014 Memorial on the Merits, DCA Trust criticizes ICANN for variety of shortcomings and breaches relating to the Articles of Incorporation, Bylaws and Applicant Guidebook. DCA Trust submits:

> 32. By preventing DCA's application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

79. DCA Trust also pleads that ICANN breached its Articles of Incorporation and Bylaws by discriminating against DCA Trust and failing to permit competition for the .AFRICA gTLD, ICANN abused it Regulatory authority in its differential treatment of the ZACR and DCA Trust applications, and in contravention of the rules for the New gTLD Program, ICANN colluded with AUC to ensure that the AUC would obtain control over .AFRICA.

80. According to DCA Trust:

> 34. ICANN discriminated against DCA and abused its regulatory authority over new gTLDs by treating it differently from other new gTLD applicants without justification or any rational basis— particularly relative to DCA's competitor ZACR—and by applying ICANN's policies in an unpredictable and inconsistent manner so as to favor DCA's competitor for .AFRICA. ICANN staff repeatedly disparaged DCA and portrayed it as an illegitimate bidder for .AFRICA, and the Board failed to stop the discriminatory treatment despite protests from DCA.
>
> 35. Moreover, ICANN staff worked with InterConnect to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation, even going so far as to draft a letter supporting ZACR for the AUC to submit back to ICANN. While ICANN staff purported to hold DCA to the strict geographic support requirement set forth in the AGB, once DCA was removed from contention for .AFRICA, ICANN staff immediately bypassed these very same rules in order to allow ZACR's application to pass the GNP evaluation. After DCA's application was pulled from processing on 7 June 2013, ICANN staff directed InterConnect to equate the AUC's support for ZACR's application as support from 100% of African governments. This was a complete change of policy for ICANN, which had insisted (until DCA's application was no longer being considered) that the AUC endorsement was not material to the geographic requirement.

> 36. However, none of the AUC statements ZACR submitted were adequate endorsements under the AGB, either. ICANN staff then took the remarkable step of drafting the AUC endorsement letter in order to enable ZACR to pass review. The Director of gTLD Operations, Trang Nguyen, personally composed an endorsement letter corresponding to all the AGB requirements for Commissioner Ibrahim's signature. Once Commissioner Ibrahim responded with a signed, stamped copy of the letter incorporating minor additions, ICANN staff rushed to pass ZACR's application just over one week later.
>
> 37. In its Response to the GAC Advice rendered against its application, DCA raised concerns that the two .AFRICA applications had been treated differently, though at the time it had no idea of just how far ICANN was going or would go to push ZACR's application through the process. Apparently the NGPC failed to make any inquiry into those allegations. .AFRICA was discussed at one meeting only, and there is no rationale listed for the NGPC's decision in the "Approved Resolutions" for the 4 June 2013 meeting. An adequate inquiry into ICANN staff's treatment of DCA's and ZACR's application—even simply asking the Director of gTLD Operations whether there was any merit to DCA's concerns—would have revealed a pattern of discriminatory behavior against DCA and special treatment by both ICANN staff and the ICANN Board in favor of ZACR's application.
>
> 38. In all of these acts and omissions, ICANN breached the AGB and its own Articles of Incorporation and Bylaws, which require it to act in good faith, avoid discriminating against any one party, and ensure open, accurate and unbiased application of its policies. Furthermore, ICANN breached principles of international law by failing to exercise its authority over the application process in good faith and committing an abuse of right by ghost-writing an endorsement letter for ZACR and the AUC, and then decreeing that the letter was all that would be needed for ZACR to pass. Finally, the Board's failure to inquire into the actions of its staff, even when on notice of the myriad of discriminatory actions, violates its obligation to comply with its Bylaws with appropriate care and diligence.

81. DCA Trust submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply ICANN's Procedures in a neutral and objective manner with procedural fairness, when it accepted the GAC Objection Advice against DCA Trust, the NGPC should have investigated questions about the GAC Objection Advice being obtained through consensus, and the NGPC should have consulted with an independent expert about the GAC advice given that the AUC used the GAC to circumvent the AGB's community objection procedures.

82. According to DCA Trust:

> 44. The decision of the NGPC, acting pursuant to the delegated authority of the ICANN Board, to accept the purported "consensus" GAC Objection Advice, violated ICANN's Articles of Incorporation and Article III § 1 of its Bylaws, requiring transparency, consistency and fairness. ICANN ignored

the serious issues raised by DCA and others with respect to the rendering and consideration of the GAC Objection Advice, breaching its obligation to operate "to the maximum extent possible in an open and transparent manner and consistent with procedures designed to ensure fairness." It also breaches ICANN's obligation under Article 4 of its Articles of Incorporation to abide by principles of international law, including good faith application of rules and regulations and the prohibition on the abuse of rights.

45. The NGPC gave undue deference to the GAC and failed to investigate the serious procedural irregularities and conflicts of interest raised by DCA and others relating to the GAC's Objection Advice on .AFRICA. ICANN had a duty under principles of international law to exercise good faith and due diligence in evaluating the GAC advice rather than accepting it wholesale and without question, despite having notice of the irregular manner in which the advice was rendered. Importantly, ICANN was well aware that the AUC was using the GAC to effectively reserve .AFRICA for itself, pursuant to ICANN's own advice that it should use the GAC for that purpose and contrary to the New gTLD Program objective of enhancing competition for TLDs. The AUC's very presence on the GAC as a member rather than an observer demonstrates the extraordinary lengths ICANN took to ensure that the AUC was able to reserve .AFRICA for its own use notwithstanding the new gTLD application process then underway.

46. The ICANN Board and staff members had actual knowledge of information calling into question the notion that there was a consensus among the GAC members to issue the advice against DCA's application, prohibiting the application of the rule in the AGB concerning consensus advice (which creates a "strong presumption" for the Board that a particular application "should not proceed" in the gTLD evaluation process).The irregularities leading to the advice against DCA's application included proposals offered by Alice Munyua, who no longer represented Kenya as a GAC advisor at the time, and the fact that the genuine Kenya GAC advisor expressly refused to endorse the advice. Redacted - GAC Designated Confidential Information

Finally, the ICANN Board knew very well that the AUC might attempt to use the GAC in an anticompetitive manner, since it was ICANN itself that informed the AUC it could use the GAC to achieve that very goal.

47. At a bare minimum, this information put ICANN Board and staff members on notice that further investigation into the rationale and support for the GAC's decision was necessary. During the very meeting wherein the NGPC accepted the Objection Advice, the NGPC acknowledged that due diligence required a conversation with the GAC, even where the advice *was* consensus advice. The evidence shows that ICANN simply decided to push through the AUC's appointed applicant in order to allow the AUC to control .AFRICA, as it had previously requested.

48. Even if the GAC's Objection Advice could be characterized as "consensus" advice, the NGPC's failure to consult with an independent expert about the GAC's Objection Advice was a breach of ICANN's duty to act to the "maximum extent feasible in an open and transparent manner

> and consistent with procedures designed to ensure fairness." The AGB specifically provides that when the Board is considering any form of GAC advice, it "may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures."
>
> 49. Given the unique circumstances surrounding the applications for .AFRICA—namely that one applicant was the designee of the AUC, which wanted to control .AFRICA without competition— ICANN should not have simply accepted GAC Objection Advice, proposed and pushed through by the AUC. If it was in doubt as to how to handle GAC advice sponsored by DCA's only competitor for .AFRICA, it could have and should have consulted a third-party expert in order to obtain appropriate guidance. Its failure to do so was, at a minimum, a breach of ICANN's duty of good faith and the prohibition on abuse of rights under international law. In addition, in light of the multiple warning signs identified by DCA in its Response to the GAC Objection Advice and its multiple complaints to the Board, failure to consult an independent expert was certainly a breach of the Board's duty to ensure its fair and transparent application of its policies and its duty to promote and protect competition.

83. DCA Trust also submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply its procedures in a neutral and objective manner, with procedural fairness, when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA.

84. According to DCA Trust:

> 50. Not only did the NGPC breach ICANN's Articles of Incorporation and its Bylaws by accepting the GAC's Objection Advice, but the NGPC also breached ICANN's Articles of Incorporation and its Bylaws by approving the BGC's recommendation not to reconsider the NGPC's earlier decision to accept the GAC Objection Advice. Not surprisingly, the NGPC concluded that its earlier decision should not be reconsidered.
>
> 51. First, the NGPC's decision not to review its own acceptance of the GAC Objection Advice lacks procedural fairness, because the NGPC literally reviewed its own decision to accept the Objection Advice. It is a well-established general principle of international law that a party cannot be the judge of its own cause. No independent viewpoint entered into the process. In addition, although Mr. Silber recused himself from the vote on .AFRICA, he remained present for the entire discussion of .AFRICA, and Mr. Disspain apparently concluded that he did not feel conflicted, so both participated in the discussion and Mr. Disspain voted on DCA's RFR.
>
> 52. Second, the participation of the BGC did not provide an independent intervention into the NGPC's decision-making process, because the BGC is primarily a subset of members of the NGPC. At the time the BGC made its recommendation, the majority of BGC members were also members of the NGPC.

> 53. Finally, the Board did not exercise due diligence and care in accepting the BGC's recommendation, because the BGC recommendation essentially proffered the NGPC's inadequate diligence in accepting the GAC Objection Advice in the first place, in order to absolve the NGPC of the responsibility to look into any of DCA's grievances in the context of the Request for Review. The basis for the BGC's recommendation to deny was that DCA did not state proper grounds for reconsideration, because failure to follow correct procedure is not a ground for reconsideration, and DCA did not identify the actual information an independent expert would have provided, had the NGPC consulted one. Thus, the BGC essentially found that the NGPC did not fail to take account of material information, because the NGPC did not have before it the material information that would have been provided by an independent expert's viewpoint. The BGC even claimed that if DCA had wanted the NGPC to exercise due diligence and consult an independent expert, DCA should have made such a suggestion in its Response to the GAC Objection Advice. Applicants should not have to remind the Board to comply with its Bylaws in order for the Board to exercise due diligence and care.
>
> 54. ICANN's acts and omissions with respect to the BGC's recommendation constitute further breaches of ICANN's Bylaws and Articles of Incorporation, including its duty to carry out its activities in good faith and to refrain from abusing its position as the regulator of the DNS to favor certain applicants over others.

85. Finally, DCA Trust pleads that:

> [As] a result of the Board's breaches of ICANN's Articles of Incorporation, Bylaws and general principles of international law, ICANN must halt the process of delegating .AFRICA to ZACR and ZACR should not be permitted to retain the rights to .AFRICA it has procured as a result of the Board's violations. Because ICANN's handling of the new gTLD application process for .AFRICA was so flawed and so deeply influenced by ICANN's relationships with various individuals and organizations purporting to represent "the African community," DCA believes that any chance it may have had to compete for .AFRICA has been irremediably lost and that DCA's application could not receive a fair evaluation even if the process were to be re-set from the beginning. Under the circumstances, DCA submits that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

ICANN's Position

86. In its Response to DCA's Memorial on the Merits filed on 3 December 2014 ("ICANN Final Memorial"), ICANN submits that:

> 2. […] Pursuant to ICANN's New gTLD Applicant Guidebook ("Guidebook"), applications for strings that represent geographic regions—such as "Africa"—require the support of at least 60% of the respective national governments in the relevant region. As DCA has acknowledged on

multiple occasions, including in its Memorial, DCA does not have the requisite governmental support; indeed, DCA now asks that ICANN be required to provide it with eighteen more months to try to gather the support that it was supposed to have on the day it submitted its application in 2012.

3. DCA is using this IRP as a means to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook. The Guidebook provides that countries may endorse multiple applications for the same geographic string. However, in this instance, the countries of Africa chose to endorse only the application submitted by ZA Central Registry ("ZACR") because ZACR prevailed in the Request for Proposal ("RFP") process coordinated by the African Union Commission ("AUC"), a process that DCA chose to boycott. There was nothing untoward about the AUC's decision to conduct an RFP process and select ZACR, nor was there anything inappropriate about the African countries' decision to endorse only ZACR's application.

4. Subsequently, as they had every right to do, GAC representatives from Africa urged the GAC to issue advice to the ICANN Board that DCA's application for .AFRICA not proceed (the "GAC Advice"). One or more countries from Africa—or, for that matter, from any continent—present at the relevant GAC meeting could have opposed the issuance of this GAC Advice, yet not a single country stated that it did not want the GAC to issue advice to the ICANN Board that DCA's application should not proceed. As a result, under the GAC's rules, the GAC Advice was "consensus" advice.

5. GAC consensus advice against an application for a new gTLD creates a "strong presumption" for ICANN's Board that the application should not proceed. In accordance with the Guidebook's procedures, the Board's New gTLD Program Committee (the "NGPC") considered the GAC Advice, considered DCA's response to the GAC Advice, and properly decided to accept the GAC Advice that DCA's application should not proceed. As ZACR's application for .AFRICA subsequently passed all evaluation steps, ICANN and ZACR entered into a registry agreement for the operation of .AFRICA. Following this Panel's emergency declaration, ICANN has thus far elected not to proceed with the delegation of the .AFRICA TLD into the Internet root zone.

6. DCA's papers contain much mudslinging and many accusations, which frankly do not belong in these proceedings. According to DCA, the entire ICANN community conspired to prevent DCA from being the successful applicant for .AFRICA. However, the actions that DCA views as nefarious were, in fact, fully consistent with the Guidebook. They also were not actions taken by the Board or the NGPC that in any way violated ICANN's Bylaws or Articles, the only issue that this IRP Panel is tasked with assessing.

87. ICANN submits that the Board properly advised the African Union's member states of the Guidebook Rules regarding geographic strings, the NGPC did not violate the Bylaws or Articles of Incorporation by accepting the GAC Advice, the AUC and the African GAC members properly supported the .AFRICA applicant chosen through the RFP

process, the GAC issued consensus advice opposing DCA's application and the NGPC properly accepted the consensus GAC Advice.

88. According to ICANN:

> 13. DCA's first purported basis for Independent Review is that ICANN improperly responded to a 21 October 2011 communiqué issued by African ministers in charge of Communication and Information Technologies for their respective countries ("Dakar Communiqué"). In the Dakar Communiqué, the ministers, acting pursuant to the Constitutive Act of the African Union, committed to continued and enhanced participation in ICANN and the GAC, and requested that ICANN's Board take numerous steps aimed at increasing Africa's representation in the ICANN community, including that ICANN "include ['Africa'] and its representation in any other language on the Reserved Names List in order [for those strings] to enjoy [] special legislative protection, so [they could be] managed and operated by the structure that is selected and identified by the African Union."
>
> 14. As DCA acknowledges, in response to the request in the Dakar Communiqué that .AFRICA (and related strings) be reserved for a operator of the African ministers' own choosing, ICANN advised that .AFRICA and its related strings could not be placed on the Reserved Names List because ICANN was "not able to take actions that would go outside of the community-established and documented guidelines of the program." Instead, ICANN explained that, pursuant to the Guidebook, "protections exist that w[ould] allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings."
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> 15. It was completely appropriate for ICANN to point the AU member states to the publicly-stated Guidebook protections for geographic names that were put in place to address precisely the circumstance at issue here—where an application for a string referencing a geographic designation did not appear to have the support of the countries represented by the string. DCA argues that ICANN was giving "instructions . . . as to how to bypass ICANN's own rules," but all ICANN was doing was responding to the Dakar Communiqué by explaining the publicly-available rules that ICANN already had in place. This conduct certainly did not violate ICANN's Bylaws or Articles.
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> 16. In particular, ICANN explained that, pursuant to the Guidebook, "Africa" constitutes a geographic name, and therefore any application for .AFRICA would need: (i) documented support from at least 60% of the national governments in the region; and (ii) no more than one written statement of objection . . . from "relevant governments in the region and/or from public authorities associated with the continent and region." Next, ICANN explained that the Guidebook provides an opportunity for the GAC, whose members include the AU member states, to provide "Early Warnings" to ICANN regarding specific gTLD applications. Finally, ICANN explained that there are four formal objection processes that can be initiated by the public, including the Community Objection process, which may be filed where there is "substantial opposition to the gTLD application from a significant

portion of the community to which the gTLD string may be explicitly or implicitly targeted. Each of these explanations was factually accurate and based on publicly available information. Notably, ICANN did not mention the possibility of GAC consensus advice against a particular application (and, of course, such advice could not have occurred if even a single country had voiced its disagreement with that advice during the GAC meeting when DCA's application was discussed).

17. DCA's objection to ICANN's response to the Dakar Communiqué reflects nothing more than DCA's dissatisfaction with the fact that African countries, coordinating themselves through the AUC, opposed DCA's application. However, the African countries had every right to voice that opposition, and ICANN's Board acted properly in informing those countries of the avenues the Guidebook provided them to express that opposition.

18. In another attempt to imply that ICANN improperly coordinated with the AUC, DCA insinuates that the AUC joined the GAC at ICANN's suggestion. ICANN's response to the Dakar Communiqué does not even mention this possibility. Further, in response to DCA's document requests, ICANN searched for communications between ICANN and the AUC relating to the AUC becoming a voting member of the GAC, and the search revealed no such communications. This is not surprising given that ICANN has no involvement in, much less control over, whether the GAC grants to any party voting membership status, including the AUC; that decision is within the sole discretion of the GAC. ICANN's Bylaws provide that membership in the GAC shall be open to "multinational governmental organizations and treaty organizations, on the invitation of the [GAC] through its Chair." In any event, whether the AUC was a voting member of the GAC is irrelevant to DCA's claims. As is explained further below, the AUC alone would not have been able to orchestrate consensus GAC Advice opposing DCA's application.

19. DCA's next alleged basis for Independent Review is that ICANN's NGPC improperly accepted advice from the GAC that DCA's application should not proceed. However, nearly all of DCA's Memorial relates to conduct of the AUC, the countries of the African continent, and the GAC. None of these concerns is properly the subject of an Independent Review proceeding because they do not implicate the conduct of the ICANN Board or the NGPC. The only actual decision that the NGPC made was to accept the GAC Advice that DCA's application for .AFRICA should not proceed, and that decision was undoubtedly correct, as explained below.

20. Although the purpose of this proceeding is to test whether ICANN's Board (or, in this instance, the NGPC) acted in conformance with its Bylaws and Articles, ICANN addresses the conduct of third parties in the next few sections because that additional context demonstrates that the NGPC's decision to accept the GAC Advice—the only decision reviewable here—was appropriate in all aspects.

21. After DCA's application was posted for public comment (as are all new gTLD applications), sixteen African countries—Benin, Burkina Faso, Comoros, Cameroon, Democratic Republic of Congo, Egypt, Gabon, Ghana, Kenya, Mali, Morocco, Nigeria, Senegal, South Africa, Tanzania and Uganda—submitted GAC Early Warnings regarding DCA's application.

Early Warnings are intended to "provid[e] [] applicant[s] with an indication that the[ir] application is seen as potentially sensitive or problematic by one or more governments." These African countries used the Early Warnings to notify DCA that they had requested the AUC to conduct an RFP for .AFRICA, that ZACR had been selected via that RFP, and that they objected to DCA's application for .AFRICA. They further notified DCA that they did not believe that DCA had the requisite support of 60% of the countries on the African continent.

22. DCA minimizes the import of these Early Warnings by arguing that they did not involve a "permissible reason" for objecting to DCA's application. But DCA does not explain how any of these reasons was impermissible, and the Guidebook explicitly states that Early Warnings "may be issued for any reason." DCA demonstrated the same dismissive attitude towards the legitimate concerns of the sixteen governments that issued Early Warnings by arguing to the ICANN Board and the GAC that the objecting governments had been "teleguided (or manipulated)."

23. In response to these Early Warnings, DCA conceded that it did not have the necessary level of support from African governments and asked the Board to "waive th[e] requirement [that applications for geographic names have the support of the relevant countries] because of the confusing role that was played by the African Union." DCA did not explain how the AUC's role was "confusing," and DCA ignored the fact that, pursuant to the Guidebook, the AUC had every right to promote one applicant over another. The AUC's decision to promote an applicant other than DCA did not convert the AUC's role from proper to improper or from clear to confusing.

24. Notably, long before the AUC opposed DCA's application, DCA itself recognized the AUC's important role in coordinating continent-wide technology initiatives. In 2009, DCA approached the AUC for its endorsement prior to seeking the support of individual African governments. DCA obtained the AUC's support at that time, including the AUC's commitment to "assist[] in the coordination of [the] initiative with African Ministers and Governments."

25. The AUC, however, then had a change of heart (which it was entitled to do, particularly given that the application window for gTLD applications had not yet opened and would not open for almost two more years). On 7 August 2010, African ministers in charge of Communication and Information Technologies for their respective countries signed the Abuja Declaration. In that declaration, the ministers requested that the AUC coordinate various projects aimed at promoting Information and Communication Technologies projects on the African continent. Among those projects was "set[ting] up the structure and modalities for the [i]mplementation of the DotAfrica Project."

26. Pursuant to that mandate, the AUC launched an open RFP process, seeking applications from private organizations (including DCA) interested in operating the .AFRICA gTLD. The AUC notified DCA that "following consultations with relevant stakeholders . . . [it] no longer endorse[d] individual initiatives [for .AFRICA]." Instead, "in coordination with the Member States . . . the [AUC] w[ould] go through [an] open [selection]

process"—hardly an inappropriate decision (and not a decision of ICANN or its Board). DCA then refused to participate in the RFP process, thereby setting up an inevitable clash with whatever entity the AUC selected. When DCA submitted its gTLD application in 2012 and attached its 2009 endorsement letter from the AUC, DCA knew full well (but did not disclose) that the AUC had retracted its support.

27. In sum, the objecting governments' concerns were the result of DCA's own decision to boycott the AUC's selection process, resulting in the selection of a different applicant, ZACR, for .AFRICA. Instead of addressing those governments' concerns, and instead of obtaining the necessary support of 60% of the countries on the African continent, DCA asked ICANN to re-write the Guidebook in DCA's favor by eliminating the most important feature of any gTLD application related to a geographic region—the support of the countries in that region. ICANN, in accordance with its Bylaws, Articles and Guidebook, properly ignored DCA's request to change the rules for DCA's benefit.

28. At its 10 April 2013 meeting in Beijing, the GAC advised ICANN that DCA's application for .AFRICA should not proceed.[40] As noted earlier, the GAC operates on the basis of consensus: if a single GAC member at the 10 April 2013 meeting (from any continent, not just from Africa) had opposed the advice, the advice would not have been considered "consensus."[41] As such, the fact that the GAC issued consensus GAC Advice against DCA's application shows that not a single country opposed that advice. Most importantly, this included Kenya: Michael Katundu, the GAC Representative for Kenya, and Kenya's only official GAC representative,was present at the 10 April 2013 Beijing meeting and did not oppose the issuance of the consensus GAC Advice.

29. DCA attempts to argue that the GAC Advice was not consensus advice and relies solely on the purported email objection of Sammy Buruchara, Kenya's GAC advisor (as opposed to GAC representative). As a preliminary matter (and as DCA now appears to acknowledge), the GAC's Operating Principles require that votes on GAC advice be made in person. Operating Principle 19 provides that:

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Similarly, Operating Principle 40 provides:

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

25. DCA argues that Mr. Buruchara objected to the GAC Advice via email, but even if objections could be made via email (which they cannot), Mr. Katundu, Kenya's GAC representative who was in Beijing at the GAC

meeting, not Mr. Buruchara, Kenya's GAC advisor, was authorized to speak on Kenya's behalf. Accordingly, under the GAC rules, Mr. Buruchara's email exchanges could not have constituted opposition to the GAC Advice.

26. Redacted - GAC Designated Confidential Information

And, tellingly, DCA did not to submit a declaration from Mr. Buruchara, which might have provided context or support for DCA's argument.

27. Redacted - GAC Designated Confidential Information

28. Notably, immediately prior to becoming Kenya's GAC advisor, Mr. Buruchara had served as the chairman of DCA's Strategic Advisory Board. But despite Mr. Buruchara's close ties with DCA and with Ms. Bekele, the Kenyan government had: (i) endorsed the Abuja Declaration; (ii) supported the AUC's processes for selecting the proposed registry operator; and (iii) issued an Early Warning objecting to DCA's application.

In other words, the Kenyan government was officially on record as supporting ZACR's application and opposing DCA's application, regardless of what Mr. Buruchara was writing in emails.

29. Furthermore, correspondence produced by DCA in this proceeding (but not referenced in either of DCA's briefs) shows that, despite Ms. Bekele's and Mr. Buruchara's efforts to obtain the support (or at least non-opposition) of the Kenyan government, the Kenyan government had rescinded its earlier support of DCA in favor of ZACR. For example, in February 2013, Ms. Bekele emailed a Kenyan government official asking that Kenya issue an Early Warning regarding ZACR's application. The official responded that he would have to escalate the matter to the Foreign Ministry because the Kenyan president "was part of the leaders of the AU who endorsed AU to be the custodian of dot Africa." On 10 April 2013, Ms. Bekele emailed Mr. Buruchara, asking him to make further points objecting to the proposed GAC advice. Mr. Buruchara responded that he was unable to do so because the Kenyan government had been informed (erroneously informed, according to Mr. Buruchara), that Mr. Buruchara was "contradict[ing] the Heads of State agreement in Abuja." On 8 July 2013,

Mr. Buruchara explained to Ms. Bekele that he "stuck [his] neck out for DCA inspite [*sic*] of lack of Govt support."

30. Because DCA did not submit a declaration from Mr. Buruchara (and because Ms. Bekele's declaration is, of course, limited to her own interpretation of email correspondence drafted by others), the Panel is left with a record demonstrating that: (i) Mr.

Buruchara was not authorized by the Kenyan government to oppose the GAC Advice; Redacted - GAC Designated Confidential Information and (iii) the actual GAC representative from Kenya (Mr. Katundu) attended the 10 April 2013 meeting in Beijing and did not oppose the issuance of the consensus GAC Advice that DCA's application for .AFRICA should not proceed.

31. In short, DCA's primary argument in support of this Independent Review proceeding—that the GAC should not have issued consensus advice against DCA's application—is not supported by any evidence and is, instead, fully contradicted by the evidence. And, of course, Independent Review proceedings do not test whether the GAC's conduct was appropriate (even though in this instance there is no doubt that the GAC appropriately issued consensus advice).

32. As noted above, pursuant to the Guidebook, GAC consensus advice that a particular application should not proceed creates a "strong presumption for the ICANN Board that the application should not be approved." The ICANN Board would have been required to develop a reasoned and well-supported rationale for not accepting the consensus GAC Advice; no such reason existed at the time the NGPC resolved to accept that GAC Advice (5 June 2013), and no such reason has since been revealed. The consensus GAC Advice against DCA's application was issued in the ordinary course, it reflected the sentiment of numerous countries on the African continent, and it was never rescinded.

33. DCA's objection to the Board's acceptance of the GAC Advice is twofold. First, DCA argues that the NGPC failed to investigate DCA's allegation that the GAC advice was not consensus advice. Second, DCA argues that the NGPC should have consulted an independent expert prior to accepting the advice. DCA also argued in its IRP Notice that two NGPC members had conflicts of interest when they voted to accept the GAC Advice, but DCA does not pursue that argument in its Memorial (and the facts again demonstrate that DCA's argument is incorrect).

34. As to the first argument, the Guidebook provides that, when the Board receives GAC advice regarding a particular application, it publishes that advice and notifies the applicant. The applicant is given 21 days from the date of the publication of the advice to submit a response to the Board. Those procedures were followed here. Upon receipt of the GAC Advice, ICANN posted the advice and provided DCA with an opportunity to respond. DCA submitted a lengthy response explaining "[w]hy DCA Trust disagree[d]" with the GAC Advice. A primary theme was that its application had been unfairly blocked by the very countries whose support the Guidebook required DCA to obtain, and that the AUC should not have been allowed to endorse an applicant for .AFRICA. DCA argued that it had been

> unfairly "victimized" and "muzzled into insignificance" by the "collective power of the governments represented at ICANN," and that "the issue of government support [should] be made irrelevant in the process so that both contending applications for .Africa would be allowed to move forward . . . ." In other words, DCA was arguing that the AUC's input was inappropriate, and DCA was requesting that ICANN change the Guidebook requirement regarding governmental support for geographic names in order to accommodate DCA. ICANN's NGPC reviewed and appropriately rejected DCA's arguments.
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> 35. One of DCA's three "supplementary arguments," beginning on page 10 of its response to the GAC Advice, was that there had been no consensus GAC advice, in part allegedly evidenced by Mr. Buruchara's (incomplete) email addressed above. DCA, however, chose not to address the fact that: (i) DCA lacked the requisite support of the African governments; (ii) Mr. Buruchara was not the Kenyan GAC representative; (iii) Mr. Buruchara was not at the Beijing meeting; (iv) the government of Kenya had withdrawn any support it may have previously had for DCA's application; and (iv) the actual Kenyan GAC representative (Mr. Katundu) was at the ICANN meeting in Beijing and did not oppose the issuance of the GAC Advice against DCA's application for .AFRICA. All of these facts were well known to DCA at the time of its response to the GAC Advice.
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> 36. The NGPC's resolution accepting the GAC Advice states that the NGPC considered DCA's response prior to accepting the GAC Advice, and DCA presents no evidence to the contrary. DCA's disagreement with the NGPC's decision does not, of course, demonstrate that the NGPC failed to exercise due diligence in determining to accept the consensus GAC Advice.
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> 37. As to DCA's suggestion that the NGPC should have consulted an independent expert, the Guidebook provides that it is within the Board's discretion to decide whether to consult with an independent expert:
>
> ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.
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> The NGPC clearly did not violate its Bylaws, Articles or Guidebook in deciding that it did not need to consult any independent expert regarding the GAC Advice. Because DCA's challenge to the GAC Advice was whether one or more countries actually had opposed the advice, there was no reason for the NGPC to retain an "expert" on that subject, and DCA has never stated what useful information an independent expert possibly could have provided.

89. ICANN also submits that the NGPC properly denied DCA's request for reconsideration, ICANN's actions following the acceptance of the GAC Advice are not relevant to the IRP, and in any event they were not improper, the ICANN staff directed the ICC to treat the two

African applications consistently, and ICANN staff did not violate any policy in drafting a template letter at the AUC request.

90. According to ICANN:

> 38. DCA argues that the NGPC improperly denied DCA's Reconsideration Request, which sought reconsideration of the NGPC's acceptance of the GAC Advice. Reconsideration is an accountability mechanism available under ICANN's Bylaws and administered by ICANN's Board Governance Committee ("BGC"). DCA's Reconsideration Request asked that the NGPC's acceptance of the GAC Advice be rescinded and that DCA's application be reinstated. Pursuant to the Bylaws, reconsideration of a Board (or in this case NGPC) action is appropriate only where the NGPC took an action "without consideration of material information" or in "reliance on false or inaccurate material information."
>
> 39. In its Reconsideration Request, DCA argued (as it does here) that the NGPC failed to consider material information by failing to consult with an independent expert prior to accepting the GAC Advice. The BGC noted that DCA had not identified any material information that the NGPC had not considered, and that DCA had not identified what advice an independent expert could have provided to the NGPC or how such advice might have altered the NGPC's decision to accept the GAC Advice. The BGC further noted that, as discussed above, the Guidebook is clear that the decision to consult an independent expert is at the discretion of the NGPC.
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> 40. DCA does not identify any Bylaws or Articles provision that the NGPC violated in denying the Reconsideration Request. Instead, DCA simply disagrees with the NGPC's determination that DCA had not identified any material information on which the NGPC failed to rely. That disagreement is not a proper basis for a Reconsideration Request or an IRP. DCA also argues (again without citing to the Bylaws or Articles) that, because the NGPC accepted the GAC Advice, the NGPC could not properly consider DCA's Reconsideration Request. In fact, the DCA's Reconsideration Request was handled exactly in the manner prescribed by ICANN's Bylaws: the BGC—a separate Board committee charged with considering Reconsideration Requests—reviewed the material and provided a recommendation to the NGPC. The NGPC then reviewed the BGC's recommendation and voted to accept it. In short, the various Board committees conducted themselves exactly as ICANN's Bylaws require.
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> 41. The NGPC accepted the GAC Advice on 4 June 2013. As a result, DCA's application for .AFRICA did not proceed. In its Memorial, DCA attempts to cast aspersions on ICANN's evaluation of ZACR's application, but that evaluation has no bearing on whether the NGPC acted consistently with its Bylaws and Articles in handling the GAC advice related to DCA's application. Indeed, the evaluation of ZACR's application did not involve any action by ICANN's Board (or NGPC), and is therefore not a proper basis for Independent Review. Although the actions of ICANN's staff are not relevant to this proceeding, ICANN addresses DCA's allegations for the sake of thoroughness and because the record demonstrates that ZACR's application was evaluated fully in conformance with the Guidebook requirements.

42. DCA alleges that "ICANN staff worked with [the ICC] to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation." DCA's argument is based on false and unsupported characterizations of the ICC's evaluation of the two .AFRICA applications.

43. First, DCA claims (without relevant citation) that ICANN determined that the AUC's endorsement would count as an endorsement from each of the AU's member states only after ICANN had stopped processing DCA's application. In fact, the record indicates that ICANN accepted the ICC's recommendation that the AUC's endorsement would qualify as an endorsement from each of the AU's member states while DCA's application was still in contention, at a time when the recommendation had the potential to benefit both applicants for .AFRICA (had DCA also in fact received the AUC's support).

44. The Guidebook provides that the Geographic Names Panel is responsible for "verifying the relevance and authenticity of supporting documentation." Accordingly, it was the ICC's responsibility to evaluate how the AUC's endorsement should be treated. The ICC recommended that the AUC's endorsement should count as an endorsement from each of the AU's member states. The ICC's analysis was based on the Abuja Declaration, which the ICC interpreted as "instruct[ing] the [AUC] to pursue the DotAfrica project, and in [the ICC's] independent opinion, provide[d] suitable evidence of support from relevant governments or public authorities." The evidence shows that ICANN accepted the ICC's recommendation before the NGPC accepted the GAC Advice regarding DCA's application— in a 26 April 2013 email discussing the preparation of clarifying questions regarding the AUC's letters of support, ICANN explained to the ICC that "if the applicant(s) is/are unable to obtain a revised letter of support from the AU [], they may be able to fulfill the requirements by approaching the individual governments."

45. DCA also claims that ICANN determined that endorsements from the UNECA would not be taken into account for geographic evaluations. This simply is not true. Pursuant to the ICC's advice, the UNECA's endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR. The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority. ICANN accepted the ICC's advice.

46. DCA argues that, after ICANN had stopped processing DCA's application, ICANN staff improperly assisted the AUC in drafting a support letter for ZACR. As is reflected in the clarifying questions the ICC drafted regarding the endorsement letters submitted on behalf of each of the two .AFRICA applications, the Guidebook contains specific requirements for letters of support from governments and public authorities. In addition to "clearly express[ing] the government's or public authority's support for or non- objection to the applicant's application," letters must "demonstrate the government's or public authority's understanding of the string being requested and its intended use" and that "the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN . . . ". In light of these specific requirements, the Guidebook even includes a sample letter of support.

> 47. The first letter of support that the AUC submitted for ZACR's application did not follow the correct format and resulted in a clarifying question from the ICC. As a result, the AUC requested ICANN staff's assistance in drafting a letter that conformed to the Guidebook's requirements. ICANN staff drafted a template based on the sample letter of support in the Guidebook, and the AUC then made significant edits to that template. DCA paints this cooperation as nefarious, but there was absolutely nothing wrong with ICANN staff assisting the AUC, assistance that DCA would certainly have welcomed, and which ICANN would have provided, had the AUC been supporting DCA instead of ZACR.

91. Finally, ICANN submits:

> 50. ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration. ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world.
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> 51. DCA knew, as did all applicants for new gTLDs, that some of the applications would be rejected. There can only be one registry operator for each gTLD string, and in the case of strings that relate to geographic regions, no application can succeed without the significant support of the countries in that region. There is no justification whatsoever for DCA's repeated urging that the support (or lack thereof) of the countries on the African continent be made irrelevant to the process.
>
> 52. Ultimately, the majority of the countries in Africa chose to support another application for the .AFRICA gTLD, and decided to oppose DCA's application. At a critical time, no country stood up to defend DCA's application. These countries—and the AUC— had every right to take a stand and to support the applicant of their choice. In this instance, that choice resulted in the GAC issuing consensus advice, which the GAC had every right to do. Nothing in ICANN's Bylaws or Articles, or in the Guidebook, required ICANN to challenge that decision, to ignore that decision, or to change the rules so that the input of the AUC, much less the GAC, would become irrelevant. To the contrary, the AUC's role with respect to the African community is critical, and it was DCA's decision to pursue a path at odds with the AUC that placed its application in jeopardy, not anything that ICANN (or ICANN's Board or the NGPC) did. The NGPC did exactly what it was supposed to do in this circumstance, and ICANN urges this IRP Panel to find as such. Such a finding would allow the countries of Africa to soon provide their citizens with what all parties involved believe to be a very important step for Africa – access to .AFRICA on the internet.

The Panel's Decision

92. The Panel in this IRP, has been asked to determine whether, in the case of the application of DCA Trust for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains ("gTLD") Internet Expansion Program (the "New gTLD Program"), the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

93. After reviewing the documentation filed in this IRP, reading the Parties' respective written submissions, reading the written statements and listening to the testimony of the three witnesses brought forward, listening to the oral presentations of the Parties' legal representatives at the hearing in Washington, D.C., reading the transcript of the hearing, and deliberating, the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

94. ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. Article 4 of ICANN's Articles of Incorporation sets this out explicitly:

> 4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

95. ICANN is also bound by its own Bylaws to act and make decisions "neutrally and objectively, with integrity and fairness."

96. These obligations and others are explicitly set out in a number of provisions in ICANN's Bylaws:

> **ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES**
>
> **Section 2. CORE (Council of Registrars) VALUES**
>
> In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

[…]

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN (Internet Corporation for Assigned Names and Numbers) body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board.

Section 3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by

> substantial and reasonable cause, such as the promotion of effective competition.
>
> **ARTICLE III: TRANSPARENCY**
>
> **Section 1. PURPOSE**
>
> ICANN (Internet Corporation for Assigned Names and Numbers) and **its constituent bodies** shall operate to the maximum extent feasible in an open and transparent manner and consistent **with procedures designed to ensure fairness**. [Underlining and bold is that of the Panel]

97. As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws and with due regard for the core values set forth in Article I of the Bylaws.

98. As set out in Section 3 (Independent Review of Board Actions) of Article IV, "any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and casually connected to the Board's alleged violation of the Bylaws or Articles of Incorporation, and not as a result of third parties acting in line with the Board's action."

99. In this IRP, among the allegations advanced by DCA Trust against ICANN, is that the ICANN Board, and its constituent body, the GAC, breached their obligation to act transparently and in conformity with procedures that ensured fairness. In particular, DCA Trust criticizes the ICANN Board here, for allowing itself to be guided by the GAC, a body "with apparently no distinct rules, limited public records, fluid definitions of membership and quorums" and unfair procedures in dealing with the issues before it.

100. According to DCA Trust, ICANN itself asserts that the GAC is a "constituent body." The exchange between the Panel and counsel for ICANN at the in-person hearing in Washington, D.C. is a living proof of that point.

> **HONORABLE JUDGE CAHILL:**
>
> Are you saying we should only look at what the Board does? The reason I'm asking is that your -- the Bylaws say that ICANN and its constituent bodies shall operate, to the maximum extent feasible, in an open and transparent manner. Does the constituent bodies include, I don't know,

GAC or anything? What is "constituent bodies"?

MR. LEVEE:

Yeah. What I'll talk to you about tomorrow in closing when I lay out what an IRP Panel is supposed to address, the Bylaws are very clear. Independent Review Proceedings are for the purpose of testing conduct or inaction of the ICANN Board. They don't apply to the GAC. They don't apply to supporting organizations. They don't apply to Staff.

HONORABLE JUDGE CAHILL:

So you think that the situation is a -- we shouldn't be looking at what the constituent -- whatever the constituent bodies are, even though that's part of your Bylaws?

MR. LEVEE:

Well, when I say not -- when you say not looking, part of DCA's claims that the GAC did something wrong and that ICANN knew that.

HONORABLE JUDGE CAHILL:

So is GAC a constituent body?

MR. LEVEE:

It is a constituent body, to be clear –

HONORABLE JUDGE CAHILL:

Yeah.

MR. LEVEE:

-- whether -- I don't think an IRP Panel -- if the only thing that happened here was that the GAC did something wrong --

HONORABLE JUDGE CAHILL:

Right.

MR. LEVEE:

-- an IRP Panel would not be -- an Independent Review Proceeding is not supposed to address that, whether the GAC did something wrong.

Now, if ICANN knew -- the Board knew that the GAC did something wrong, and that's how they link it, they say, Look, the GAC did something wrong, and ICANN knew it, the Board -- if the Board actually knew it, then we're dealing with Board conduct.

The Board knew that the GAC did not, in fact, issue consensus advice. That's the allegation. So it's fair to look at the GAC's conduct.

101. The Panel is unanimously of the view that the GAC is a constituent body of ICANN. This is not only clear from the above exchange between the Panel and counsel for ICANN, but also from Article XI (Advisory Committees) of ICANN's Bylaws and the Operating Principles of the GAC. Section 1 (General) of Article XI of ICANN's Bylaws states:

> The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2, under the heading, Specific Advisory Committees states:

> There shall be at least the following Advisory Committees:
>
> 1. Governmental Advisory Committee
>
> a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues. [Underlining is that of the Panel]

Section 6 of the preamble of GAC's Operating Principles is also relevant. That Section reads as follows:

> The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests.

102. According to DCA Trust, based on the above, and in particular, Article III (Transparency), Section 1 of ICANN's Bylaws, therefore, the GAC was bound to the transparency and fairness obligations of that provision to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness", but as ICANN's own witness, Ms. Heather Dryden acknowledged during the hearing, the GAC did not act with transparency or in a manner designed to insure fairness.

> **Mr. ALI:**
>
> Q. But what was the purpose of the discussion at the Prague meeting with respect to AUC? If there really is no difference or distinction between voting/nonvoting, observer or whatever might be the opposite of observer,

> or the proper terminology, what was -- what was the point?
>
> **THE WITNESS:**
>
> A. I didn't say there was no difference. The issue is that there isn't GAC agreement about what are the -- the rights, if you will, of -- of entities like the AUC. And there might be in some limited circumstances, but it's also an extremely sensitive issue. And so not all countries have a shared view about what those -- those entities, like the AUC, should be able to do.
>
> Q. So not all countries share the same view as to what entities, such as the AUC, should be able to do. Is that what you said? I'm sorry. I didn't --
>
> A. Right, because that would only get clarified if there is a circumstance where that link is forced. In our business, we talk about creative ambiguity. We leave things unclear so we don't have conflict.

103. As explained by ICANN in its Closing Presentation at the hearing, ICANN's witness, Ms. Heather Dryden also asserted that the GAC Advice was meaningless until the Board acted upon it. This last point is also clear from examining Article I, Principle 2 and 5 of ICANN GAC's Operating Principles. Principle 2 states that "the GAC is not a decision making body" and Principle 5 states that "the GAC shall have no legal authority to act for ICANN".

> **MR. ALI:**
>
> Q. I would like to know what it is that you, as the GAC Chair, understand to be the consequences of the actions that the GAC will take --
>
> **HONORABLE JUDGE CAHILL:**
>
> The GAC will take?
>
> **MR. ALI:**
>
> Q. -- the GAC will take -- the consequences of the actions taken by the GAC, such as consensus advice?
>
> **HONORABLE JUDGE CAHILL:**
>
> There you go.
>
> **THE WITNESS:**
>
> That isn't my concern as the Chair. It's really for the Board to interpret the outputs coming from the GAC.

104. Ms. Dryden also stated that the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's a deference to that.

That's certainly the case here as well.

105. ICANN was bound by its Bylaws to conduct adequate diligence to ensure that it was applying its procedures fairly. Section 1 of Article III of ICANN's Bylaws, require it and its constituent bodies to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board must also as per Article IV, Section 3, Paragraph 4 exercise due diligence and care in having a reasonable amount of facts in front of it.

106. In this case, on 4 June 2013, the NGPC accepted the GAC Objection Advice to stop processing DCA Trust's application. On 1 August 2013, the BGC recommended to the NGPC that it deny DCA Trust's Request for Reconsideration of the NGPC's 4 June 2013 decision, and on 13 August 2013, the NGPC accepted the BGC's recommendation (i.e., the NGPC declined to reconsider its own decision) without any further consideration.

107. In this case, ICANN through the BGC was bound to conduct a meaningful review of the NGPC's decision. According to ICANN's Bylaws, Article IV, Section 2, the Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The [BGC] shall have the authority to, among other things, conduct whatever factual investigation is deemed appropriate, and request additional written submissions from the affected party, or from others.

108. Finally, the NGPC was not bound by – nor was it required to give deference to – the decision of the BGC.

109. The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address this issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to insure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.

110. The following excerpt of exchanges between the Panel and one of ICANN's witnesses, Ms. Heather Dryden, the then Chair of the GAC, provides a useful background for the decisions reached in this IRP:

> **PRESIDENT BARIN:**
>
> But be specific in this case. Is that what happened in the .AFRICA case?
>
> **THE WITNESS:**
>
> The decision was very quick, and --
>
> **PRESIDENT BARIN:**
>
> But what about the consultations prior? In other words, were -- were you privy to --
>
> **THE WITNESS:**
>
> No. If -- if colleagues are talking among themselves, then that's not something that the GAC, as a whole, is -- is tracking or -- or involved in. It's really those interested countries that are.
>
> **PRESIDENT BARIN:**
>
> Understood. But I assume -- I also heard you say, as the Chair, you never want to be surprised with something that comes up. So you are aware of -- or you were aware of exactly what was happening?
>
> **THE WITNESS:**
>
> No. No. You do want to have a good sense of where the problems are, what's going to come unresolved back to the full GAC meeting, but that's -- that's the extent of it.

And that's the nature of -- of the political process.

Redacted - GAC Designated Confidential Information

HONORABLE JUDGE CAHILL:

Okay.

THE WITNESS:

-- that question was addressed via having that meeting.

PRESIDENT BARIN:

And what's your understanding of what -- what the consequence of that decision is or was when you took it? So what happens from that moment on?

THE WITNESS:

It's conveyed to the Board, so all the results, the agreed language coming out of GAC is conveyed to the Board, as was the case with the communiqué from the Beijing meeting.

PRESIDENT BARIN:

And how is that conveyed to the Board?

THE WITNESS:

Well, it's a written document, and usually Support Staff are forwarding it to Board Staff.

ARBITRATOR KESSEDJIAN:

Could you speak a little bit louder? I don't know whether I am tired, but I --

THE WITNESS:

Okay. So as I was saying, the document is conveyed to the Board once it's concluded.

PRESIDENT BARIN:

When you say “the document”, are you referring to the communiqué?

THE WITNESS:

Yes.

PRESIDENT BARIN:

Okay. And there are no other documents?

THE WITNESS:

The communiqué --

PRESIDENT BARIN:

In relation to .AFRICA. I'm not interested in any other.

THE WITNESS:

Yes, it's the communiqué.

PRESIDENT BARIN:

And it's prepared by your staff? You look at it?

THE WITNESS:

Right --

PRESIDENT BARIN:

And then it's sent over to --

THE WITNESS:

-- right, it's agreed by the GAC in full, the contents.

PRESIDENT BARIN:

And then sent over to the Board?

THE WITNESS:

And then sent, yes.

PRESIDENT BARIN:

And what happens to that communiqué? Does the Board receive that and say, Ms. Dryden, we have some questions for you on this, or --

THE WITNESS:

Not really. If they have questions for clarification, they can certainly ask that in a meeting. But it is for them to receive that and then interpret it and -- and prepare the Board for discussion or decision.

PRESIDENT BARIN:

Okay. And in this case, you weren't asked any questions or anything?

THE WITNESS:

I don't believe so. I don't recall.

PRESIDENT BARIN:

Any follow-ups, right?

THE WITNESS:

Right.

PRESIDENT BARIN:

And in the subsequent meeting, I guess the issue was tabled. The Board meeting that it was tabled, were you there?

THE WITNESS:

Yes. I don't particularly recall the meeting, but yes.

[…]

ARBITRATOR KESSEDJIAN:

Can I turn your attention to Paragraph 5 of your declaration?

Here, you basically repeat what is in the ICANN Guidebook literature, whatever. These are the exact words, actually, that you use in your declaration in terms of why there could be an objection to an applicant -- to a specific applicant. And you use three criteria: problematic, potentially violating national law, and raise sensitivities.

Now, I'd like you to, for us -- for our benefit, to explain precisely, as concrete as you can be, what those three concepts -- how those three concepts translate in the DCA case. Because this must have been discussed in order to get this very quick decision that you are mentioning. So I'd like to understand, you know, because these are the criteria -- these are the three criteria; is that correct?

THE WITNESS:

That is what the witness statement says, but the link to the GAC and the role that I played in terms of the GAC discussion did not involve me interpreting those three things. In fact, the GAC did not provide rationale for the consensus objection.

ARBITRATOR KESSEDJIAN:

No.

But, I mean, look, the GAC is taking a decision which -- very quickly -- I'm using your words, "very quickly" -- erases years and years and years of work, a lot of effort that have been put by a single applicant. And the way I understand the rules is that the -- the GAC advice -- consensus advice against that applicant are -- is based on those three criteria. Am I wrong in that analysis?

THE WITNESS:

I'm saying that the GAC did not identify a rationale for those governments that put forward a string or an application for consensus objection. They might have identified their reasons, but there was not GAC agreement about those reasons or -- or -- or -- or rationale for that. We had some discussion earlier about Early Warnings. So Early Warnings were issued by individual countries, and they indicated their rationale. But, again, that's not a GAC view.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's […] deference to that. That's certainly the case here as well. The -- if a country tells -- tells the GAC or says it has a concern, that's not really something that -- that's evaluated, in the sense you mean, by the other governments. That's not the way governments work with each other.

HONORABLE JUDGE CAHILL:

So you don't go into the reasons at all with them?

THE WITNESS:

To issue a consensus objection, no.

HONORABLE JUDGE CAHILL:

Okay. ---

[…]

PRESIDENT BARIN:

I have one question for you. We spent, now, a bit of time or a considerable amount of time talking to you about the process, or the procedure leading to the consensus decision.

Can you tell me what your understanding is of why the GAC consensus objection was made finally?

[…]

But in terms of the .AFRICA, the decision -- the issue came up, the agenda -- the issue came up, and you made a decision, correct?

THE WITNESS:

The GAC made a decision.

PRESIDENT BARIN:

Right. When I say “you”, I mean the GAC.

Do you know -- are you able to express to us what your understanding of the substance behind that decision was? I mean, in other words, we've spent a bit of time dealing with the process.

Can you tell us why the decision happened?

THE WITNESS:

The sum of the GAC’s advice is reflected in its written advice in the communiqué. That is the view to GAC. That's -- that's --

[…]

ARBITRATOR KESSEDJIAN:

I just want to come back to the point that I was making earlier. To your Paragraph 5, you said -- you answered to me saying that is my declaration, but it was not exactly what's going on. Now, we are here to --

at least the way I understand the Panel's mandate, to make sure that the rules have been obeyed by, basically. I'm synthesizing. So I don't understand how, as the Chair of the GAC, you can tell us that, basically, the rules do not matter -- again, I'm rephrasing what you said, but I'd like to give you another opportunity to explain to us why you are mentioning those criteria in your written declaration, but, now, you're telling us this doesn't matter.

If you want to read again what you wrote, or supposedly wrote, it's Paragraph 5.

THE WITNESS:

I don't need to read again my declaration. Thank you. The header for the GAC's discussions throughout was to refer to strings or applications that were controversial or sensitive. That's very broad. And –

ARBITRATOR KESSEDJIAN:

I'm sorry. You say the rules say problematic, potentially violate national law, raise sensitivities. These are precise concepts.

THE WITNESS:

Problematic, violate national law -- there are a lot of laws -- and sensitivities does strike me as being quite broad.

[…]

ARBITRATOR KESSEDJIAN:

Okay. So we are left with what? No rules?

THE WITNESS:

No rationale with the consensus objections.

That's the -- the effect.

ARBITRATOR KESSEDJIAN:

I'm done.

HONORABLE JUDGE CAHILL:

I'm done.

PRESIDENT BARIN:

So am I.

111. The Panel understands that the GAC provides advice to the ICANN Board on matters of public policy, especially in cases where ICANN activities and policies may interact with national laws or international agreements. The Panel also understands that GAC advice is developed through consensus among member nations. Finally, the Panel understands that although the ICANN Board is required to consider GAC advice and recommendations, it is not obligated to follow those recommendations.

112. Paragraph IV of ICANN's Beijing, People's Republic of China 11 April 2013 Communiqué [Exhibit C-43] under the heading "GAC Advice to the ICANN Board" states:

> **IV. GAC Advice to the ICANN Board**
> **1. New gTLDs**
> **a. GAC Objections to the Specific Applications**
> **i. The GAC Advises the ICANN Board that:**
>
> i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:
>
> 1. The application for .africa (Application number 1-1165-42560)
>
> […]

Footnote 3 to Paragraph IV.1. (a)(i)(i) above in the original text adds, "Module 3.1: The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." A similar statement in this regard can be found in paragraph 5 of Ms. Dryden's 7 February 2014 witness statement.

113. In light of the clear "Transparency" obligation provisions found in ICANN's Bylaws, the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust's application.

114. The Panel would have had a similar expectation with respect to the NGPC Response to the GAC Advice regarding .AFRICA which was expressed in ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01 [Exhibit C-45]. In that document, in response to DCA Trust's application, the NGPC stipulated:

> The NGPC accepts this advice. The AGB provides that "if GAC advised ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved. The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may with draw […] or seek relief according to ICANN's accountability mechanisms (see ICANN's Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

115. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

116. As indicated above, there are perhaps a number of other instances, including certain decisions made by ICANN, that did not proceed in the manner and spirit in which they should have under the Articles of Incorporation and Bylaws of ICANN.

117. DCA Trust has criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above is dispositive of this IRP, it does not find it necessary to determine who was right, to what extent and for what reasons in respect to the other criticisms and other alleged shortcomings of the ICANN Board identified by DCA Trust.

2) Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

118. In the conclusion of its Memorial on the Merits filed with the Panel on 3 November 2014, DCA Trust submitted that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments

to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

119. In its Final Request for Relief filed with the Panel on 23 May 2015, DCA Trust requested that this Panel recommend to the ICANN Board that it cease all preparations to delegate the .AFRICA gTLD to ZACR and recommend that ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA.

120. DCA Trust also requested that this Panel recommend to ICANN that it compensate DCA Trust for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

121. In its response to DCA Trust's request for the recommendations set out in DCA Trust's Memorial on the Merits, ICANN submitted that this Panel does not have the authority to grant the affirmative relief that DCA Trust had requested.

122. According to ICANN:

> 48. DCA's request should be denied in its entirety, including its request for relief. DCA requests that this IRP Panel issue a declaration requiring ICANN to "rescind its contract with ZACR" and to "permit DCA's application to proceed through the remainder of the application process." Acknowledging that it currently lacks the requisite governmental support for its application, DCA also requests that it receive "18 months to negotiate with African governments to obtain the necessary endorsements." In sum, DCA requests not only that this Panel remove DCA's rival for .AFRICA from contention (requiring ICANN to repudiate its contract with ZACR), but also that it rewrite the Guidebook's rules in DCA's favor.
>
> 49. IRP Panels do not have authority to award affirmative relief. Rather, an IRP Panel is limited to stating its opinion as to "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and recommending (as this IRP Panel has done previously) that the Board stay any action or decision, or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel. The Board will, of course, give extremely serious consideration to the Panel's recommendations.

123. In its response to DCA Trust's amended request for recommendations filed on 23 May 2015, ICANN argued that because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from

recommending how the Board should then proceed in light of the Panel's declaration.

124. In response, DCA Trust submitted that according to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation.

125. According to ICANN, "indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself [suggests] that DCA could seek relief through ICANN's accountability mechanisms or, in other words, the Reconsideration process and the Independent Review Process." Furthermore:

> If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

126. After considering the Parties' respective submissions in this regard, the Panel is of the view that it does have the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

127. Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws states:

> **ARTICLE IV: ACCOUNTABILITY AND REVIEW**
> **Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS**
>
> 11. The IRP Panel shall have the authority to:
>
> d. recommend that the Board stay any action or decision or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

128. The Panel finds that both the language and spirit of the above section gives it authority to recommend how the ICANN Board might fashion a remedy to redress injury or harm that is directly related and causally connected to the Board's violation of the Bylaws or the Articles of Incorporation.

129. As DCA Trust correctly points out, with which statement the Panel agrees, "if the IRP mechanism – the mechanism of last resort for

gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm."

130. Use of the imperative language in Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, is clearly supportive of this point. That provision clearly states that the IRP Panel has the authority to recommend a course of action until such time as the Board considers the opinion of the IRP and acts upon it.

131. Furthermore, use of the word "opinion", which means the formal statement by a judicial authority, court, arbitrator or "Panel" of the reasoning and the principles of law used in reaching a decision of a case, is demonstrative of the point that the Panel has the authority to recommend affirmative relief. Otherwise, like in section 7 of the Supplementary Procedures, the last sentence in paragraph 11 would have simply referred to the "declaration of the IRP". Section 7 under the heading "Interim Measures of Protection" says in part, that an "IRP PANEL may recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the IRP declaration."

132. The scope of Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws is clearly broader than Section 7 of the Supplementary Procedures.

133. Pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, therefore, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

3) Who is the prevailing party in this IRP?

134. In its letter of 1 July 2015, ICANN submits that, "ICANN believes that the Panel should and will determine that ICANN is the prevailing party. Even so, ICANN does not seek in this instance the putative effect that would result if DCA were required to reimburse ICANN for all of the costs that ICANN incurred. This IRP was much longer [than] anticipated (in part due to the passing of one of the panelists last summer), and the Panelists' fees were far greater than an ordinary IRP, particularly because the Panel elected to conduct a live hearing."

135. DCA Trust on the other hand, submits that, "should it prevail in this IRP, ICANN should be responsible for all of the costs of this IRP, including the interim measures proceeding." In particular, DCA Trust writes:

> On March 23, 2014, DCA learned via email from a supporter of ZA Central Registry ("ZACR"), DCA's competitor for .AFRICA, that ZACR would sign a registry agreement with ICANN in three days' time (March 26) to be the registry operator for .AFRICA. The very same day, we sent a letter on behalf of DCA to ICANN's counsel asking ICANN to refrain from executing the registry agreement with ZACR in light of the pending IRP proceedings. *See* DCA's Request for Emergency Arbitrator and Interim Measures of Protection, Annex I (28 Mar. 2014). Instead, ICANN entered into the registry agreement with ZACR the very next day—two days ahead of schedule. […] Later that same day, ICANN responded to DCA's request by treating the execution of the contract as a *fait accompli* and, for the first time, informed DCA that it would accept the application of Rule 37 of the 2010 [ICDR Rules], which provides for emergency measures of protection, even though ICANN's Supplementary Procedures for ICANN Independent Review Process expressly provide that Rule 37 does not apply to IRPs. A few days later, on March 28, 2014, DCA filed a Request for Emergency Arbitrator and Interim Measures of Protection with the ICDR. ICANN responded to DCA's request on April 4, 2014. An emergency arbitrator was appointed by the ICDR; however, the following week, the original panel was fully constituted and the parties' respective submissions were submitted to the Panel for its review on April 13, 2014. After a teleconference with the parties on April 22 and a telephonic hearing on May 5, the Panel ruled that "ICANN must immediately refrain from any further processing of any application for .AFRICA" during the pendency of the IRP. Decision on Interim Measures of Protection, ¶ 51 (12 May 2014).

136. A review of the various procedural orders, decisions, and declarations in this IRP clearly indicates that DCA Trust prevailed in many of the questions and issues raised.

137. In its letter of 1 July 2015, DCA Trust refers to several instances in which ICANN was not successful in its position before this Panel. According to DCA Trust, the following are some examples, "ICANN's Request for Partial Reconsideration, ICANN's request for the Panel to rehear the proceedings, and the evidentiary treatment of ICANN's written witness testimony in the event it refused to make its witnesses available for questioning during the merits hearing."

138. The Panel has no doubt, as ICANN writes in its letter of 1 July 2015, that the Parties' respective positions in this IRP "were asserted in good faith." According to ICANN, "although those positions were in many instances diametrically opposed, ICANN does not doubt that DCA believed in the credibility of the positions that it took, and

[ICANN believes] that DCA feels the same about the positions ICANN took."

139. The above said, after reading the Parties' written submissions concerning the issue of costs and deliberation, the Panel is unanimously of the view that DCA Trust is the prevailing party in this IRP.

4) Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

140. DCA Trust submits that ICANN should be responsible for *all* costs of this IRP, including the interim measures proceeding. Among other arguments, DCA Trust submits:

> This is consistent with ICANN's Bylaws and Supplementary Procedures, which together provide that in ordinary circumstances, the party not prevailing shall be responsible for all costs of the proceeding. Although ICANN's Supplementary Procedures do not explain what is meant by "all costs of the proceeding," the ICDR Rules that apply to this IRP provide that "costs" include the following:
>
> > (a) the fees and expenses of the arbitrators;
> >
> > (b) the costs of assistance required by the tribunal, including its experts;
> >
> > (c) the fees and expenses of the administrator;
> >
> > (d) the reasonable costs for legal representation of a successful party; and
> >
> > (e) any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.
>
> Specifically, these costs include all of the fees and expenses paid and owed to the [ICDR], including the filing fees DCA paid to the ICDR (totaling $4,750), all panelist fees and expenses, including for the emergency arbitrator, incurred between the inception of this IRP and its final resolution, legal costs incurred in the course of the IRP, and all expenses related to conducting the merits hearing (*e.g.*, renting the audiovisual equipment for the hearing, printing hearing materials, shipping hard copies of the exhibits to the members of the Panel).
>
> Although in "extraordinary" circumstances, the Panel may allocate up to half of the costs to the prevailing party, DCA submits that the circumstances of this IRP do not warrant allocating costs to DCA should it prevail. The reasonableness of DCA's positions, as well as the meaningful contribution this IRP has made to the public dialogue about both ICANN's accountability mechanisms and the appropriate deference owed by ICANN to its Governmental Advisory Committee, support a full award of costs to

> DCA.
>
> […]
>
> To the best of DCA's knowledge, this IRP was the first to be commenced against ICANN under the new rules, and as a result there was little guidance as to how these proceedings should be conducted. Indeed, at the very outset there was controversy about the applicable version of the Supplemental Rules as well as the form to be filed to initiate a proceeding. From the very outset, ICANN adopted positions on a variety of procedural issues that have increased the costs of these proceedings. In DCA's respectful submission, ICANN's positions throughout these proceedings are inconsistent with ICANN's obligations of transparency and the overall objectives of the IRP process, which is the only independent accountability mechanism available to parties such as DCA.

141. DCA Trust also submits that ICANN's conduct in this IRP increased the duration and expense of this IRP. For example, ICANN failed to appoint a standing panel, it entered into a registry agreement with DCA's competitor for .AFRICA during the pendency of this IRP, thereby forcing DCA Trust to request for interim measures of protection in order to preserve its right to a meaningful remedy, ICANN attempted to appeal declarations of the Panel on procedural matters where no appeal mechanism was provided for under the applicable procedures and rules, and finally, ICANN refused only a couple of months prior to the merits hearing, to make its witnesses available for viva voce questioning at the hearing.

142. ICANN in response submits that, "both the Bylaws and the Supplementary Procedures provide that, in the ordinary course, costs shall be allocated to the prevailing party. These costs include the Panel's fees and the ICDR's fees, [they] would also include the costs of the transcript."

143. ICANN explains on the other hand that this case was extraordinary and this Panel should exercise its discretion to have each side bear its own costs as this IRP "was in many senses a first of its kind." According to ICANN, among other things:

> This IRP was the first associated with the Board's acceptance of GAC advice that resulted in the blocking of an application for a new gTLD under the new gTLD Program;
>
> This was the first IRP associated with a claim that one or more ICANN Board members had a conflict of interest with a Board vote; and
>
> This was the first (and still only) IRP related to the New gTLD Program that involved a live hearing, with a considerable amount of debate associated with whether to have a hearing.

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

145. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, however, DCA Trust and ICANN shall each bear their own expenses, and they shall also each bear their own legal representation fees.

146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:

a) the fees and expenses of the panelists;
b) the fees and expenses of the administrator, the ICDR;
c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.

147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

V. DECLARATION OF THE PANEL

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to

refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA Trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

    a) the fees and expenses of the panelists;
    b) the fees and expenses of the administrator, the ICDR;
    c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
    d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
    e) As a result of the above, the administrative fees of the ICDR totaling US$4,600 and the Panelists' compensation and expenses totaling US$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US$198,046.04

151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

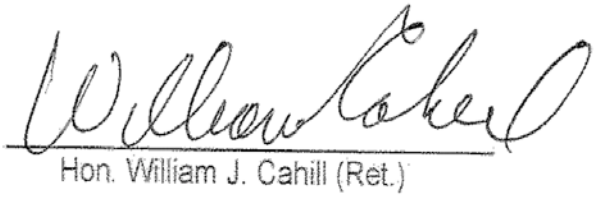
The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.

This Final Declaration has sixty-three (63) pages.

Date: Thursday, 9 July 2015.

Place of the IRP, Los Angeles, California.

Professor Catherine Kessedjian



Hon. William J. Cahill (Ret.)

Babak Barin, President

Ex. R-23

RESPONDENT'S EXHIBIT

Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy
- Operational Design Phase (ODP)
- Implementation
- Public Comment
- Root Zone KSK Rollover

Approved Board Resolutions | Special Meeting of the ICANN Board

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16 Jul 2015

1. Main Agenda
   a. DotConnectAfrica Trust (DCA) v. ICANN IRP Final Declaration
   Rationale for Resolutions 2015.07.16.01 – 2015.07.16.05

1. Main Agenda

a. DotConnectAfrica Trust (DCA) v. ICANN IRP Final Declaration

Whereas, on 9 July 2015, an independent review panel ("Panel") issued a final Declaration ("Declaration") in the independent review proceedings (IRP) initiated by DotConnectAfrica Trust (DCA), in which DCA sought relief relating to Board action or inaction on its application for .AFRICA.

Whereas, in the Declaration, the Panel set forth the following:

> 148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness [sic], listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.
>
> 149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.
>
> 150. The Panel declares DCA trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of the Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:
>
> > a) the fees and expenses of the panelists;
> > b) the fees and expenses of the administrator, the ICDR;
> > c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
> > d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington D.C.
> > e) As a result of the above, the administrative fees of the ICDR totalling

Technical Functions

ICANN Locations

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> US$4,600 and Panelists' compensation and expenses totalling US$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US$198,046.04.
>
> 151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The parties shall also each bear their own legal representation fees.

Whereas, the independent review process is an integral ICANN accountability mechanism that helps support ICANN's multistakeholder model, and the Board thanks the Panel for its efforts in this IRP, and would like to specifically honor the memory of former panelist Hon. Richard C. Neal, who passed away during the proceedings.

Whereas, in addition to the Declaration, the Board must also take into account other relevant information, including but not limited to: (i) that ICANN received and accepted GAC consensus advice that DCA's application for .AFRICA should not proceed; and (ii) that ICANN has a signed Registry Agreement with ZA Central Registry ("ZACR") to operate the .AFRICA top-level domain.

Whereas, pursuant to Article IV, Section 3.21 of the Board considered the Declaration at the Board's next meeting, which the Board specifically scheduled in order to take action on this matter as quickly as possible.

Resolved (2015.07.15.01), the Board has considered the entire Declaration, and has determined to take the following actions based on that consideration:

1. ICANN shall continue to refrain from delegating the .AFRICA gTLD;
2. ICANN shall permit DCA's application to proceed through the remainder of the new gTLD application process as set out below; and
3. ICANN shall reimburse DCA for the costs of the IRP as set forth in paragraph 150 of the Declaration.

Resolved (2015.07.16.02), since the Board is not making a final determination at this time as to whether DCA's application for .AFRICA should proceed to contracting or delegation, the Board does not consider that resuming evaluation of DCA's application is action that is inconsistent with GAC advice.

Resolved (2015.07.16.03), the Board directs the President and CEO, or his designee(s), to take all steps necessary to resume the evaluation of DCA's application for .AFRICA and to ensure that such evaluation proceeds in accordance with the established process(es) as quickly as possible (see Applicant Guidebook at http://newgtlds.icann.org/en/applicants/agb for established processes).

Resolved (2015.07.16.04), with respect to the GAC's consensus advice in the Beijing Communiqué that DCA's application for .AFRICA should not proceed, which was confirmed in the London Communiqué, the Board will ask the GAC if it wishes to refine that advice and/or provide the Board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration.

Resolved (2015.07.16.05), in the event that DCA's application for .AFRICA successfully passes the remainder of the evaluation process, at that time or before, the Board will consider any further advice or information received from the GAC, and proceed as necessary, balancing all of the relevant material information and circumstances. Should the Board undertake any action that may be inconsistent with the GAC's advice, the Board will follow the established process set out in the Bylaws (see ICANN Bylaws, Article XI, Section 2.1).

Rationale for Resolutions 2015.07.16.01 – 2015.07.16.05

On 24 October 2013, DotConnectAfrica Trust (DCA) initiated an independent review proceeding (IRP) against ICANN, and filed a notice of independent review with the International Centre for Dispute Resolution (ICDR), ICANN's chosen IRP provider. In the IRP proceedings, DCA challenged the 4 June 2013 decision of the ICANN Board New gTLD Program Committee (NGPC), which was delegated authority from the Board to make decisions regarding the New gTLD Program. In that decision, the NGPC accepted advice from ICANN's Governmental Advisory Committee (GAC) that DCA's application for .AFRICA should not proceed.

On 9 July 2015, the IRP Panel (Panel) issued its Final Declaration (Declaration or Decl.). The Panel cited two main concerns relating to the GAC's advice on DCA's application: (1) the Panel was concerned that the GAC did not include, and that ICANN did not request, a rationale on the GAC's advice; and (2) the Panel expressed concern that ICANN took action on the GAC's advice without conducting diligence on the level of transparency and the manner in which the advice was developed by the GAC. The Panel found that ICANN's conduct was inconsistent with the ICANN Articles and Bylaws because of certain actions and inactions of the ICANN Board.

As provided in Article IV, Section 3 of the Bylaws, any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. The Panel is charged with comparing the contested Board actions to the Articles of Incorporation and Bylaws, and declaring whether the Board acted consistently with the provisions of those Articles of Incorporation and Bylaws. The Panel must apply a defined standard of review to the IRP request focusing on:

a. did the Board act without conflict of interest in taking its decision?;

b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and

c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

After the Panel issues its final Declaration, the Board is then required to consider the Declaration at its next meeting (where feasible). Pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board has considered and discussed the Declaration and is taking action to: (1) continue to refrain from delegating the .AFRICA gTLD; (2) permit DCA's application to proceed through the remainder of the new gTLD application process; and (3) reimburse DCA for the costs of the IRP as set forth in paragraph 150 of the Declaration.

Additionally, the Board will communicate with the GAC and attempt to ascertain whether the GAC wishes to refine its advice concerning DCA's application for .AFRICA and/or provide the Board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration. The Board will consider any response the GAC may choose to provide, and proceed as necessary, balancing all of the relevant material information and circumstances. Should the Board undertake any action that may be inconsistent with the GAC's advice, the Board will follow the established processes set out in the Bylaws. As required by the Bylaws, if the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The Board's action represents a careful balance, weighing the opinion of the Panel, as well as other significant factors discussed in this rationale. In taking this action today, each of the Board members exercised independent judgment, was not conflicted on

this matter, and believes that this decision is in the best interests of the ICANN. The Board considered several significant factors as part of its consideration of the Declaration and had to balance its consideration with other factors. Among the factors the Board considered to be significant are the following:

1. The IRP is an integral ICANN accountability mechanism that helps support ICANN's multistakeholder model. The Board considers the principles found in ICANN's accountability mechanisms to be fundamental safeguards in ensuring that ICANN's bottom-up, multistakeholder model remains effective, and ICANN achieves its accountability and transparency mandate. The Board has carefully considered the Declaration, and in taking its action the Board, as did the Panel, takes specific note of the following regarding the independent review process and its obligations for accountability and transparency:
    - ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. (Decl. ¶ 94.)
    - ICANN is also bound by its own Bylaws to act and make decisions "neutrally and objectively, with integrity and fairness." (Decl. ¶ 95.)
    - As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws and with due regard for the core values set forth in Article I of the Bylaws. (Decl. ¶ 97.)

2. ICANN has a signed Registry Agreement with ZA Central Registry NPC trading as Registry.Africa (ZACR) under which ZACR is authorized to operate the .AFRICA top-level domain. Parties affected by these resolutions have had, and may continue to have, the ability to challenge or otherwise question DCA's application through the evaluation and other processes.

3. The Board considered the community-developed processes in the New gTLD Program Applicant Guidebook (Guidebook). According to Section 3.1 of the Guidebook, the GAC may provide public policy advice to the ICANN Board on any application, which the Board must consider. When the GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, it "will create a strong presumption for the ICANN Board that the application should not be approved." In its 11 April 2013 Beijing Communiqué, the GAC stated it had reached consensus on GAC Objection Advice for .AFRICA application number 1-1165-42560, thereby creating a strong presumption for the ICANN Board that this application should not proceed through the program. Additionally, in its 25 June 2014 London Communiqué, the GAC stated that "Consistent with the new gTLD applicant guidebook, the GAC provided consensus advice articulated in the April 11 2013 communiqué that the DotConnectAfrica (DCA) application number 1-1165-42560 for dot Africa should not proceed. The GAC welcomes the June 2013 decision by the New gTLD Program Committee to accept GAC advice on this application."

    The Guidebook does not require the Board to engage the GAC in a dialogue about its advice when consensus has been reached, or question the GAC how such consensus was reached. The acceptance of the GAC advice on this matter was fully consistent with the Guidebook. Notably, however, the Board has requested additional information from the GAC when the Board thought it needed more information before taking a decision, both before and during the New gTLD Program. Here, the NGPC did not think it required additional information from the GAC. Further, in addition to the GAC advice, the Board also had DCA's response to that advice, which the NGPC considered before accepting the GAC advice. Notwithstanding the Guidebook, the Panel has suggested that, ". . . the GAC made its decision without providing any rationale . . ." (Decl. ¶ 104), and ". . . the Panel would have expected the ICANN Board

to, at a minimum, investigate the matter further before rejecting DCA Trust's application." (Decl. ¶ 113).

4. The Board considered Section 5.1 of the Guidebook, which provides that, "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism."

On balance, the Board has determined that permitting DCA's application to proceed through the remainder of the new gTLD application evaluation process is the best course of action at this time. Doing so helps promote ICANN's ability to make a decision concerning DCA's application for .AFRICA by applying documented procedures in the most transparent, neutral and objective manner possible, while also recognizing the importance of ICANN's accountability mechanisms. Completion of the application evaluation would allow DCA's application to undergo the same review processes as other gTLD applicants, and is not inconsistent with the GAC's advice. Further, completing the evaluation will provide additional relevant information for ICANN to consider as part of any final determination as to whether DCA's application for .AFRICA should proceed beyond initial evaluation.

There will be a financial impact on ICANN in taking this decision in that resuming the evaluation process for DCA's application for .AFRICA will result in additional cost, but that cost was anticipated in the application fee already received. The Board directs the President and CEO to re-engage the evaluation processes for DCA's application as quickly as possible, and to strongly encourage any third-party providers charged with performing the relevant New gTLD Program evaluations and analysis also to act as quickly as possible in concluding their evaluations in accordance with the established processes and procedures in the Guidebook.

There may also be additional costs to ICANN the extent any party challenges this decision. This action will have no impact on the security, stability or resiliency of the domain name system.

The significant materials related to the matters at issue in the Determination include, but are not limited to the following:

- Dakar Communiqué (27 October 2011) (https://gacweb.icann.org/download/attachments/27132037/Communique%20Dakar%20-%2027%20October%202011.pdf?version=1&modificationDate=1323819889000&api=v2)
- Letter from Stephen Crocker to Elham M.A. Ibrahim (https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf)
- African Union Communiqué (https://www.icann.org/resources/files/african-union-communique-2011-10-21-en)
- DotConnectAfrica Trust's application for .AFRICA (https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1276?t:ac=1276)
- ZACR's application for .AFRICA (https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1184?t:ac=1184)
- Letter from Heather Dryden to Stephen Crocker (17 June 2012) re: Processing of Applications for New Generic TopLevel Domain

(https://www.icann.org/en/news/correspondence/dryden-to-crocker-17jun12-en)

- Letter from Stephen Crocker to Heather Dryden (27 July 2012) re: Processing of applications for New Generic Top-Level Domains (http://www.icann.org/en/system/files/correspondence/crocker-to-dryden-27jul12-en.pdf)
- GAC Early Warnings filed against DCA's application for .AFRICA
  - African Union Commission: https://gacweb.icann.org/download/attachments/27131927/Africa-AUC-42560.pdf?version=1&modificationDate=1353382039000&api=v2
  - Comoros: https://gacweb.icann.org/download/attachments/27131927/Africa-KM-42560.pdf?version=1&modificationDate=1353384893000&api=v2
  - Kenya: https://gacweb.icann.org/download/attachments/27131927/Africa-KE-42560.pdf?version=1&modificationDate=1353389367000&api=v2
  - Cameroon: https://gacweb.icann.org/download/attachments/27131927/Africa-CM-42560.pdf?version=1&modificationDate=1353430788000&api=v2
  - DRC: https://gacweb.icann.org/download/attachments/27131927/Africa-CD-42560.pdf?version=2&modificationDate=1353432869000&api=v2
  - Benin: https://gacweb.icann.org/download/attachments/27131927/Africa-BJ-42560.pdf?version=1&modificationDate=1353433003000&api=v2
  - Egypt: https://gacweb.icann.org/download/attachments/27131927/Africa-EG-1-42560.pdf?version=1&modificationDate=1353378092000&api=v2
  - Gabon: https://gacweb.icann.org/download/attachments/27131927/Africa-GA-42560.pdf?version=1&modificationDate=1353451525000&api=v2
  - Burkina Faso: https://gacweb.icann.org/download/attachments/27131927/Africa-BF-42560.pdf?version=1&modificationDate=1353451829000&api=v2
  - Ghana: https://gacweb.icann.org/download/attachments/27131927/Africa-GH-42560.pdf?version=1&modificationDate=1353451997000&api=v2
  - Mali: https://gacweb.icann.org/download/attachments/27131927/Africa-ML-42560.pdf?version=1&modificationDate=1353452174000&api=v2
  - Uganda: https://gacweb.icann.org/download/attachments/27131927/Africa-UG-42560.pdf?version=1&modificationDate=1353452442000&api=v2
  - Senegal: https://gacweb.icann.org/download/attachments/27131927/Africa-SN-42560.pdf?version=1&modificationDate=1353452452000&api=v2
  - South Africa: https://gacweb.icann.org/download/attachments/27131927/Africa-ZA-89583.pdf?version=1&modificationDate=1353452595000&api=v2
  - Nigeria: https://gacweb.icann.org/download/attachments/27131927/Africa-NG-2-42560.pdf?version=1&modificationDate=1353378092000&api=v2
  - Tanzania: https://gacweb.icann.org/download/attachments/27131927/Africa-TZ-42560.pdf?version=1&modificationDate=1353452982000&api=v2
- DCA Response to GAC Early Warning (http://www.dotconnectafrica.org/wp-content/uploads/2012/12/Response-to-the-ICANN-GAC-Early-Warning-Advice-against-the-.Africa-Application-Submitted-by-DotConnectAfrica-Trust.pdf)
- GAC Beijing Communiqué (11 April 2013)

(https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf)

- DCA Response to GAC Advice in Beijing Communiqué (http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf)
- NGPC Resolution 2014.06.04.NG01 (https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en#1.a)
- The NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013) (https://www.icann.org/en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf)
- DCA Trust Reconsideration Request 13-4 and attachments (https://www.icann.org/en/groups/board/governance/reconsideration/13-4/request-dca-trust-19jun13-en.pdf)
- BGC Recommendation on Reconsideration Request 13-14 (https://www.icann.org/en/groups/board/governance/reconsideration/13-4/recommendation-dca-trust-01aug13-en.pdf)
- NGPC Action Adopting BGC Recommendation on Reconsideration Request 13-4 (https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13aug13-en.htm#1.c)
- GAC London Communiqué (25 June 2014) (https://www.icann.org/en/system/files/correspondence/gac-to-board-25jun14-en.pdf)
- DCA Response to GAC Advice in London Communiqué (http://newgtlds.icann.org/sites/default/files/applicants/11aug14/gac-advice-response-1-1165-42560.pdf)
- NGPC Resolution 2014.09.08.NG02 (https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-09-08-en - 1.b)
- The NGPC Scorecard - GAC Advice (London, Singapore, Buenos Aires, Durban, Beijing): Actions and Updates (as of 8 September 2014) (https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-08sep14-en.pdf)
- Letter from Steve Crocker to Heather Dryden re: NGPC Meeting of 8 September 2014 (https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-10sep14-en.pdf)
- All briefs, declarations, and supporting documents filed by DCA Trust and ICANN in the Independent Review Proceeding *DCA Trust v. ICANN* (https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en)
- Letter from Akram Atallah to Neil Dundas (13 July 2015) re: Final Declaration in the DotConnectAfrica Trust (DCA) Independent Review Proceeding (IRP) (https://www.icann.org/en/system/files/correspondence/atallah-to-dundas-13jul15-en.pdf)
- Letter from Dr. Elham M.A. Ibrahim to Steve Crocker (14 July 2015) re: Independent Review Panel (IRP) recommendation on the matter between DCA and ICANN related to Dot Africa gTLD (https://www.icann.org/en/system/files/correspondence/ibrahim-to-crocker-14jul15-en.pdf)
- Letter from Lucky Masilela to Steve Crocker (15 July 2015) re: ZACR Response on the Independent Review Process (IRP) Final Declaration

(https://www.icann.org/en/system/files/correspondence/masilela-to-crocker-15jul15-en.pdf)

This is an Organizational Administrative function that does not require public comment.

Published on 16 July 2015

Ex. R-24

RESPONDENT'S EXHIBIT

Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy

Approved Board Resolutions | Regular Meeting of the ICANN Board

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29 Oct 2017

1. **Consent Agenda:**
   a. **Consideration of Reconsideration Request 17-4**
      Rationale for Resolution 2017.10.29.01

2. **Main Agenda:**
   a. **Request for New or Additional Information from the Governmental Advisory Committee re: Advice on Amazon Applications**
      Rationale for Resolutions 2017.10.29.02 – 2017.10.29.03

   b. **Request to Defer Compliance Enforcement of Thick WHOIS Consensus Policy for 180 Days**
      Rationale for Resolution 2017.10.29.04

   c. **Refinement of string similarity review in IDN ccTLD Fast Track Process**
      Rationale for Resolutions 2017.10.29.05 – 2017.10.29.06

1. Consent Agenda:

a. Consideration of Reconsideration Request 17-4

Whereas, dotgay LLC and DotMusic Limited (the Requestors) filed Reconsideration Request 17-4 (Request 17-4) challenging ICANN organization's response to the Requestors' request for documents pursuant to ICANN's Documentary Information Disclosure Policy relating to the Community Priority Evaluation (CPE) process review.

Whereas, the Board Accountability Mechanisms Committee (BAMC) previously determined that Request 17-4 is sufficiently stated and sent the Request to the Ombudsman for review and consideration in accordance with Article 4, Sections 4.2(j) and (k) of the ICANN Bylaws.

Whereas, the Ombudsman recused himself from this matter pursuant to Article 4, Section 4.2(l)(iii) of the Bylaws.

Operational Design Phase (ODP)
Implementation
Public Comment
Root Zone KSK Rollover
Technical Functions
ICANN Locations
Help

Whereas, the BAMC has considered the merits of Request 17-4 and all relevant materials, and has recommended that Request 17-4 be denied on the basis that Request 17-4 does not set forth a proper basis for reconsideration, and the Board agrees.

Whereas, the Board has also considered the Requestors' rebuttal to the BAMC's Recommendation on Request 17-4 and concludes that the rebuttal provides no additional argument or evidence to support reconsideration.

Resolved (2017.10.29.01), the Board adopts the BAMC Recommendation on Request 17-4 [PDF, 273 KB].

Rationale for Resolution 2017.10.29.01

1. Brief Summary

The Requestors dotgay LLC (dotgay) and DotMusic Limited (DotMusic) submitted community-based applications for .GAY and .MUSIC, respectively; both applications participated in CPE and neither prevailed. In October 2015, dotgay sought reconsideration of the CPE outcome (Request 15-21),[1] which the Board Governance Committee (BGC)[2] denied.[3] In February 2016, dotgay sought reconsideration of the BGC's denial of Request 15-21 (see Request 16-3).[4] In February 2016, DotMusic sought reconsideration of the CPE determination and approval of DotMusic's application (Request 16-5).[5]

Subsequently, the ICANN Board directed the President and CEO, or his designee(s), to undertake a review of the process by which ICANN organization interacted with the CPE provider (CPE Process Review). The BGC later decided that the CPE Process Review should also include the reference materials relied upon by the CPE provider for the evaluations, which are the subject of pending Requests for Reconsideration concerning CPE. The BGC placed the eight pending reconsideration requests relating to CPE on hold, including Requests 16-3 and 16-5, pending completion of the CPE Process Review.

On 10 June 2017, the Requestors submitted a Joint DIDP Request seeking documents and information relating to the CPE Process Review, some of which the Requestors had sought in prior DIDP requests. (*See* Joint DIDP Request, attached as Attachment E to the Reference Materials.) ICANN organization's response (Response to Joint DIDP Request, attached as Attachment F to the Reference Materials) explained that, except for certain documents that were subject to DIDP Defined Conditions for Nondisclosure (Nondisclosure Conditions), all other responsive documents had been published and identified in response to the Requestors' prior DIDP requests.[6] (*See id.*) The Response to Joint DIDP Request provided hyperlinks to the

responses to the prior DIDP requests, which in turn identified and provided hyperlinks to publicly available responsive documents. (*See id.* at Pg. 2.) The Response to Joint DIDP Request further explained that two items (Item Nos. 2 and 4) did not seek documentary information in existence within ICANN. (*See id.*) Additionally, the Response to Joint DIDP Request explained that ICANN organization evaluated responsive documents subject to Nondisclosure Conditions to determine if the public interest in disclosing them outweighed the harm of disclosure, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of disclosing the documents. (*See id.* at Pg. 3.)

The Requestors then filed Reconsideration Request 17-4 (Request 17-4) challenging the Response to Joint DIDP Request. (*See* Request 17-4, attached as Attachment A to the Reference Materials.) The Requestors suggest that reconsideration of the Response to Joint DIDP Request is warranted because ICANN organization violated ICANN's Core Values, established DIDP policies and the Bylaws concerning non-discriminatory treatment, transparency, and accountability. (*See id.* at §8, Pg. 21.)

The BAMC considered Request 17-4 and all relevant materials and recommended that the Board deny Request 17-4 because it does not set forth a proper basis for reconsideration for the reasons set forth in the BAMC Recommendation on Reconsideration Request 17-4 (the BAMC Recommendation), which Recommendation has been considered and is incorporated here. (*See* BAMC Recommendation [PDF, 273 KB], attached as Attachment D to the Reference Materials.)

On 26 October 2017, the Requestors submitted a rebuttal to the BAMC's Recommendation (Rebuttal), pursuant to Article 4, Section 4.2(q) of ICANN's Bylaws. (See Rebuttal, attached as Attachment G to the Reference Materials.) The Requestors suggest that: (1) Request 17-4 was within the scope of the reconsideration process because "[t]he reconsideration process permits review of an action or inaction—not just the process used to take the action"; (2) "[t]he DIDP relates to ICANN [organization's] Commitments and Core Values, which require transparency"; and (3) ICANN organization violated its commitments to transparency, accountability, and fairness in the Response to Joint DIDP Request. (*See id.*)

2. Facts and Recommendation

The full factual background is set forth in the BAMC Recommendation [PDF, 273 KB], which the Board has reviewed and considered, and which is incorporated here.

On 11 October 2017, the BAMC recommended that Request 17-4

be denied on the basis that Request 17-4 does not set forth a proper basis for reconsideration for the reasons set forth in the BAMC Recommendation [PDF, 273 KB], which the Board has considered and which are incorporated here.

On 26 October 2017, the Requestors submitted a rebuttal to the BAMC's Recommendation, pursuant to Article 4, Section 4.2(q) of ICANN organization's Bylaws, which the Board has also considered.

3. Issues

The issues for reconsideration are[7]:

- Whether ICANN organization complied with established ICANN policies in responding to the Joint DIDP Request.
- Whether ICANN organization complied with its Core Values, Mission, and Commitments in responding to the Joint DIDP Request.

4. The Relevant Standards for Evaluating Reconsideration Requests

Article 4, Sections 4.2(a) and (c) of ICANN's Bylaws provide in relevant part that any entity may submit a request "for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

i. One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);

ii. One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

iii. One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(ICANN Bylaws, 22 July 2017, Art. 4, §§ 4.2(a), (c).) Pursuant to Article 4, Section 4.2(k) of the Bylaws, if the BAMC determines that the Request is sufficiently stated, the Request is sent to the Ombudsman for review and consideration. (*See id.* at § 4.2(l).) If the Ombudsman recuses himself from the matter, the BAMC reviews the Request without involvement by the Ombudsman, and provides a recommendation to the Board. (*See id.* at § 4.2(l)(iii).) The Requestor may file a rebuttal to the BAMC's

recommendation, provided that the rebuttal is: (i) "limited to rebutting or contradicting the issues raised in the BAMC's recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request." (*See id.* at § 4.2(q).) Denial of a request for reconsideration of ICANN action or inaction is appropriate if the BAMC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws. (*See id.* at § 4.2(e)(vi), (q), (r).)

5. Analysis and Rationale

The Board has reviewed and thoroughly considered Request 17-4 and all relevant materials, including the BAMC Recommendation. The Board finds the analysis set forth in the BAMC Recommendation [PDF, 273 KB], which is incorporated here, to be sound. The Board has also considered the Requestors' Rebuttal to the BAMC Recommendation. The Board finds that the Rebuttal does not raise arguments or facts that support reconsideration.

A. **ICANN Organization Adhered To Established Policies And Procedures In Responding To The Joint DIDP Request.**

The BAMC concluded and the Board agrees that the Response to Joint DIDP Request complied with applicable policies and procedures. (BAMC Recommendation [PDF, 273 KB], Pgs. 16-27.) In responding to a request for documents submitted pursuant to the DIDP, ICANN organization adheres to the "Process For Responding To ICANN's Documentary Information Disclosure Policy (DIDP) Requests" (DIDP Response Process). (*See* DIDP Response Process [PDF, 59 KB].) The DIDP Response Process provides that "[u]pon receipt of a DIDP Request, ICANN staff performs a review of the Request and identifies what documentary information is requested . . ., interviews . . . the relevant staff member(s) and performs a thorough search for documents responsive to the DIDP Request." (*Id.*) Once the documents collected are reviewed for responsiveness, a review is conducted to determine if the documents identified as responsive to the Request are subject to any of the Nondisclosure Conditions set forth on the DIDP web page at https://www.icann.org/resources/pages/didp-2012-02-25-en. If so, a further review is conducted to determine whether, under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such

disclosure. (*See* DIDP Response Process [PDF, 59 KB].)

Consistent with the DIDP Response Process, the Response to Joint DIDP Request explained that, except for certain documents that were subject to Nondisclosure Conditions, all other responsive documents had been published and identified in response to the Requestors' prior DIDP requests. (*See* Response to Joint DIDP Request [PDF, 214 KB], Pg. 2.) For Item Nos. 1 and 3, ICANN organization determined that all of the responsive documentary information already had been published on ICANN's website, and provided to the Requestors in response to prior DIDP requests. (*See id.* at 2.) The DIDP responses to those requests identified and provided the hyperlinks to 21 publicly available documents and websites compiling documents that contain information responsive to Item Nos. 1 and 3. (*See id.*) The Response to Joint DIDP Request further explained that two Items (Items No. 2 and 4) did not seek documentary information in existence within ICANN. (*See id.*) Notwithstanding this requirement, ICANN organization provided significant information responsive to Item Nos. 2 and 4 in the Status Update and in an earlier CPE Process Review update, and provided hyperlinks to those updates. (*See id.* at 2-3.) Additionally, the Response to Joint DIDP Request explained that some of the documents responsive to Item Nos. 2 and 4 were subject to certain identified Nondisclosure Conditions. (*See id.*) The Response to Joint DIDP Request further explained that ICANN organization evaluated responsive documents subject to Nondisclosure Conditions, as required, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of disclosing the documents. (*See id.* at 3.)

The Requestors suggest that reconsideration is warranted because ICANN organization violated ICANN's Core Values and policies established in the DIDP and Bylaws concerning non-discriminatory treatment, transparency, and accountability in its response to Items No. 1 through 4. (*See* Request 17-4, § 8, Pg. 21.) Additionally, the Requestors suggest that the ICANN organization's determinations as to the applicability of the specified Nondisclosure Conditions in response to Items No. 2 and 4 warrant reconsideration because it "is in the public's interest to disclose" those documents. (*Id.* at § 8, Pg. 22.)

The BAMC determined, and the Board agrees, that Requestors' position is not supported because ICANN organization did adhere to established policies and procedures in responding to the DIDP Request. (*See*

BAMC Recommendation [PDF, 273 KB], Pgs. 16-27.) The Requestors do not claim that the Response to Joint DIDP Request is contrary to the DIDP Response Process, nor do the Requestors provide any information to show how ICANN organization's Response to Joint DIDP Request violates ICANN's Mission, Commitments, or Core Values. (*See id.*) The BAMC further concluded, and the Board agrees, that ICANN organization complied with the DIDP Process in evaluating the responsive documents subject to Nondisclosure Conditions, as required, and determined that there were no circumstances for which the public interest in disclosing the information outweighed the potential harm of disclosing the documents. (*See id.* at 21-26.) While the Requestors might believe that ICANN organization should have exercised its discretion differently, that is not a basis for reconsideration.

B. **The Requestors' Unsupported References to ICANN Commitments and Core Values Do Not Support Reconsideration of the Response to Joint DIDP Request.**

The Requestors suggest that ICANN organization violated the following Commitments and Core Values in the Response to Joint DIDP Request: Article 1, Sections 1.2(a), 1.2(a)(v), 1.2(a)(vi) and Article 3, Section 3.1 of the ICANN Bylaws. (*See* Request 17-4, § 6, Pgs. 5-7.) However, as the BAMC concluded, and the Board agrees, the Requestors provide no explanation for how these Commitments and Core Values relate to the Response to Joint DIDP Request at issue in Request 17-4 or how ICANN organization might have violated these Commitments and Core Values. (*See* BAMC Recommendation [PDF, 273 KB], Pgs. 26-27.) As such, the Requestors have not established grounds for reconsideration through its list of Commitments and Core Values.

C. **The Rebuttal Does Not Raise Arguments or Facts That Support Reconsideration.**

The Board has considered the Requestors' Rebuttal and finds that the Requestors have not provided any additional arguments or facts supporting reconsideration.

The Rebuttal claims that: (1) Request 17-4 was within the scope of the reconsideration process because "[t]he reconsideration process permits review of an action or inaction—not just the process used to take the action"; (2) "[t]he DIDP relates to ICANN [organization's] Commitments and Core Values, which require

transparency"; and (3) ICANN organization violated its commitments to transparency, accountability, and fairness in the Response to Joint DIDP Request. (*See* Rebuttal.)

With respect to the first claim, the Board has considered Request 17-4 and all relevant materials, the BAMC's Recommendation, and the Rebuttal, and finds that reconsideration is not warranted. The Reconsideration Request process provides a vehicle for requestors to seek reconsideration of ICANN organization's "action or inaction to the extent that the requestor has been adversely affected by … [o]ne of more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values, and/or established ICANN policy(ies)." (ICANN Bylaws, Art. 4, Section 4.2(c)(i).) Reconsideration is appropriate ***if*** the Requestor demonstrates that the action or inaction contradicts "ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies)." (*Id*.; *see also, e.g.,* Board Determination on Request 17-3, https://www.icann.org/resources/board-material/resolutions-2017-09-23-en#2.b; Board Determination on Request 17-1, https://www.icann.org/resources/board-material/resolutions-2017-06-24-en#2.d.)[8] A Reconsideration Request that challenges the outcome of ICANN organization's action or inaction without any supporting evidence beyond the requestor's dissatisfaction with that outcome does not meet the standard for reconsideration. Similarly, a Reconsideration Request that does not explain how the challenged action or inaction contradicted ICANN organization's Mission, Commitments, Core Values, and/or established ICANN policy(ies), without more, cannot justify reconsideration.

The Requestors state that "reconsideration requests provide an opportunity to re-examine an action or inaction." (Rebuttal, Pg. 3.) That is precisely what occurred here. Indeed, notwithstanding the Requestors' failure to demonstrate that ICANN organization's actions or inaction violated its Mission, Commitments, Core Values, and/or established ICANN policy(ies), the BAMC evaluated the Response to Joint DIDP Request to determine if such a violation did occur. The BAMC concluded, and the Board agrees, that ICANN organization's action in the Response was consistent with its Mission, Commitments, Core Values, and established policies. (BAMC Recommendation, Pgs. 16-27.)

Second, the Requestors argue that "ICANN must comply with its Commitments and Core Values during the DIDP," because "[t]he DIDP is clearly related to these

Commitments and Core Values." (Rebuttal, Pgs. 4-5.) However, the Response to Joint DIDP Request did comply with ICANN organization's Commitments and Core Values. The DIDP implements ICANN's Commitments and Core Values supporting transparency and accountability by setting forth a procedure through which documents concerning ICANN organization's operations and within ICANN's organization's possession, custody, or control are made available to the public unless there is a compelling reason for confidentiality. (See DIDP, https://www.icann.org/resources/pages/didp-2012-02-25-en) But neither the DIDP nor ICANN organization's Commitments and Core Values supporting transparency and accountability obligates ICANN organization to make public every document in ICANN organization's possession. As the Panel in the Amazon EU S.A.R.L. v. ICANN Independent Review Process Panel noted earlier this year:

> [N]otwithstanding ICANN's transparency commitment, both ICANN's By-Laws and its Publication Practices recognize that there are situations where non-public information, e.g., internal staff communications relevant to the deliberative processes of ICANN . . . may contain information that is appropriately protected against disclosure.

(Amazon EU S.A.R.L. v. ICANN, ICDR Case No. 01-16-000-7056, Procedural Order (7 June 2017), at Pg. 3.) ICANN organization's Bylaws address the need to balance competing interests such as transparency and privacy, noting that "in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing test must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission." (ICANN Bylaws, Art. I, Section 1.2(c).) The DIDP sets forth a test for balancing privacy concerns, such as privilege and protecting the deliberative process, which support ICANN organization's Core Values of operating with efficiency and excellence and "striving to achieve a reasonable balance between the interests of different stakeholders while also avoiding capture", against the Core Value of transparency. (*Id.* at Sections 1.2(b)(v) and 1.2(b)(vii).) Accordingly, ICANN organization may appropriately exercise its discretion, pursuant to the DIDP, in determining that certain documents are not appropriate for disclosure without contravening its commitment to transparency.

Third, the Requestors claim that the Response to Joint DIDP Request contradicted ICANN's Commitments and Core Values supporting transparency, fairness, and accountability. (Rebuttal, Pgs. 9-10.) The Board finds that these arguments are not supported.

With respect to ICANN's commitment to transparency, the Requestors suggest that ICANN organization should have disclosed all requested documents, or at least "identif[ied] the documents subject to [Nondisclosure] Conditions and explain[ed] how the Nondisclosure Conditions apply." (*Id.* at Pg. 6.) As discussed above, ICANN organization adhered to established policies and procedures, including ICANN's commitment to transparency, in finding certain of the requested documents subject to DIDP Nondisclosure Conditions. Further, the Board finds that the Response to Joint DIDP Request Process does not require ICANN organization to identify the Nondisclosure Condition applicable to each individual document withheld; indeed, such a requirement could place an undue burden on ICANN. Here, the BAMC sufficiently explained how the Nondisclosure Conditions applied to the documents that ICANN organization determined were not appropriate for disclosure. Specifically, consistent with the Response to Joint DIDP Request Process, the BAMC explained that the requested materials contained internal drafts, materials that could compromise the integrity of the deliberative and decision-making process with respect to the CPE Process Review, and materials subject to the attorney-client or other privileges. (BAMC Recommendation, Pgs. 23-24.) Ultimately, the Requestors have not shown that ICANN organization failed to follow the DIDP or that the Response to Joint DIDP Request contradicted ICANN's Commitments and Core Values supporting transparency, fairness, and accountability.

The Requestors also suggest that ICANN's Commitments and Core Values supporting transparency and fairness required ICANN organization to disclose the requested materials even if certain Nondisclosure Conditions apply, because the CPE Review Process is "significant to Requestors" and others, because "[t]he public is clearly interested" in the requested documents, and because the Requestors suspect "there is little harm in disclosure of [the] documents." (Rebuttal, Pgs. 6-8.) "Public interest" is not determined by whether any entity is "interested" in a matter, but whether an action was in the overall "public interest." Further, the DIDP gives ICANN organization the discretion to decide if, "under the particular circumstances, . . . the public interest in disclosing the information

outweighs the harm that may be caused by such disclosure." (DIDP webpage, https://www.icann.org/resources/pages/didp-2012-02-25-en.)

As explained in the Response to Joint DIDP Request, ICANN organization evaluated the documents that were subject to Nondisclosure Conditions to determine if the public interest (including transparency and fairness concerns) in disclosing them outweighed the harm that may be caused by such disclosure, and concluded that the public interest did not warrant the harm that would be caused by disclosure under these circumstances. (*See* Response to Joint DIDP Request, Pg. 2-3.) As noted above, the Requestors believe that ICANN organization should have exercised its discretion differently, but that is not a basis for reconsideration because the Requestors have not shown that ICANN organization contravened the DIDP in any way.

The Requestors also suggest that ICANN "has closed-off the possibility of obtaining additional information [about the CPE Process Review] in clear contradiction of its own stated Commitment to and Core Value of transparency. (Rebuttal, Pg. 7.) Similarly, the Requestors suggest that ICANN organization "has restricted . . . access to information regarding the [CPE Process Review] in a blatantly unfair decision that keeps affected uninformed and raises several red flags regarding the integrity of the independent review itself," and that "ICANN has prohibited informed participation in the [CPE Process Review] by the Internet Community." (Id. at Pgs. 9-10.) The Board notes that the BGC and ICANN organization have provided several updates concerning the CPE Process Review, including one on 1 September 2017. (https://www.icann.org/news/announcement-2017-09-01-en.) Additionally, and as noted in the 1 September 2017 update, the CPE Process Review is still ongoing. When the CPE Process Review is complete, additional information will be made available to the ICANN community, including to the Requestors.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures, by having a process in place by which a person or entity materially affected by an action of the ICANN Board or Staff may request reconsideration of that action or inaction by the Board.

Adopting the BAMC's Recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

2. Main Agenda:

a. Request for New or Additional Information from the Governmental Advisory Committee re: Advice on Amazon Applications

Whereas, the Final Declaration in the Amazon EU S.à.r.l. (Amazon) v. ICANN Independent Review Process (IRP) was issued on 11 July 2017.

Whereas, in the Final Declaration, the Panel recommended that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." (Final Declaration at ¶ 125.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version on the Bylaws, the Board considered the Final Declaration at its 23 September 2017 meeting and determined that further consideration was needed regarding the Panel's non-binding recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."

Whereas, the Board asked the Board Accountability Mechanisms Committee (BAMC) to review and consider the Panel's recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications," and to provide options for the Board to consider in addressing the Panel's recommendation.

Whereas, the BAMC has recommended that the Board ask the Governmental Advisory Committee (GAC) if it has: (i) any information to provide to the Board as it relates to the "merits-based public policy reasons," regarding the GAC's advice that the Amazon applications should not proceed; or (ii) any other new or additional information to provide to the Board regarding the GAC's advice that the Amazon applications should not proceed.

Resolved (2017.10.29.02), the Board asks the GAC if it has: (i) any information to provide to the Board as it relates to the "merits-based public policy reasons," regarding the GAC's advice that the Amazon

applications should not proceed; or (ii) any other new or additional information to provide to the Board regarding the GAC's advice that the Amazon applications should not proceed.

Resolved (2017.10.29.03), the Board asks the GAC that if it has any new or additional information (as requested above) to provide to the Board, it does so by the conclusion of the ICANN61 meeting scheduled to take place from 10-15 March 2018, in order to assist the Board's appropriate and prompt consideration.

Rationale for Resolutions 2017.10.29.02 – 2017.10.29.03

Amazon EU S.à.r.l. (Amazon) initiated Independent Review Process (IRP) proceedings challenging the New gTLD Program Committee's (NGPC's) 14 May 2014 decision to accept the Governmental Advisory Committee (GAC) consensus advice that three Amazon applications should not proceed. (Resolution 2014.05.14.NG03, available at https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b.)

Amazon applied for .AMAZON and its Chinese and Japanese character equivalents (Amazon Applications), which passed Initial Evaluation (see https://newgtlds.icann.org/sites/default/files/ier/bqe3so7p3lu2ia8ouwp7eph9/ie-1-1315-58086-en.pdf [PDF, 46 KB]). In response to the Amazon Applications, the governments of Brazil and Peru, with the endorsement of Bolivia, Ecuador and Guyana, submitted an Early Warning through the GAC, in accordance with the Applicant Guidebook, in which the concerned governments stated that: "[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." (Early Warning, available at https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197938/Amazon-BR-PE-58086.pdf [PDF, 79 KB].)

After indicating in the Beijing Communiqué (April 2013) that the Amazon Applications required further GAC consideration, the GAC provided consensus advice (GAC Advice) to the ICANN Board in the Durban Communiqué (18 July 2013) that the Amazon Applications should not proceed (https://gacweb.icann.org/display/GACADV/2013-07-18-Obj-Amazon).

On 14 May 2014, the Board (acting through the NGPC) accepted the GAC Advice and directed ICANN not to proceed with the Amazon Applications. (Resolution 2014.05.14.NG03, available at https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b.) The NGPC's decision was without prejudice to the

continuing efforts by Amazon and members of the GAC to pursue dialogue on the relevant issues.

In March 2016, Amazon initiated an independent review of ICANN Board Resolution 2014.05.14.NG03 directing that the Amazon Applications should not proceed.

On 11 July 2017, the IRP Panel (Panel) issued its Final Declaration in the Amazon IRP (https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf [PDF, 294 KB]). The Panel's findings and recommendation are summarized below, and available in full at https://www.icann.org/resources/pages/irp-amazon-v-icann-2016-03-04-en.

In a 2-1 decision, the Panel declared Amazon to be the prevailing party, and declared that the "Board, acting through the NGPC, acted in a manner inconsistent with its Articles, Bylaws and Applicant Guidebook because, […] by giving complete deference to the consensus advice of the [GAC] regarding whether there was a well-founded public policy reason for its advice, the NGPC failed in its duty to independently evaluate and determine whether valid and merits-based public policy interests existed supporting the GAC's consensus advice." (Final Declaration at ¶ 2.) The Panel further declared that "ICANN shall bear the costs of this IRP as well as the cost of the IRP provider," and "shall reimburse Amazon the sum of $163,045.51." (Final Declaration at ¶ 126.)

In addition, the Panel recommended that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." If the Board determines that the Amazon Applications should not proceed, the Panel indicated that "the Board should explain its reasons supporting that decision"; the "GAC consensus advice, standing alone, cannot supplant the Board's independent and objective decision with a reasoned analysis." (Final Declaration at ¶ 125.) In the alternative, if the Board determines that the Amazon Applications should proceed, the Panel recommended that ICANN conduct its "'meet and confer' with the GAC" "within sixty (60) days of the issuance of this Final Declaration." (Final Declaration at ¶ 125.) In coming to its conclusions, the Panel stated that "under the facts of this IRP, the procedural fairness obligation applicable to the GAC, at a minimum, required that the GAC allow a written statement or comment from a potentially adversely affected party, before it decided whether to issue consensus advice objecting to an application[; and the] Board's obligation was to see that the GAC, as a constituent body of ICANN, had such a procedure and that it followed it." (Final Declaration at ¶ 94.)

The Panel further concluded that "GAC consensus advice, although no reasons or rationale need be given, nonetheless must be based on a well-founded public interest concern and this public interest basis must

be ascertained or ascertainable from the entirety of the record before the NGPC." (Final Declaration at ¶ 103.) According to the Panel, "the NGPC deferred to the consensus GAC advice regarding the existence of a valid public policy concern and by so doing, it abandoned its obligation under ICANN governance documents to make an independent, merits-based and objective decision whether or not to allow the applications to proceed." The Panel further noted that, "[b]y failing to independently evaluate and articulate the existence of a well-founded public policy reason for the GAC advice, the NGPC, in effect, created a conclusive or irrebuttable presumption for the GAC consensus advice." (Final Declaration at ¶ 116.)

In accordance with Article IV, section 3.21 of the applicable version on the Bylaws, the Board considered the Final Declaration at its meeting on 23 September 2017 and determined, among other things, that further consideration was needed regarding the Panel's non-binding recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." The Board asked the BAMC to review and consider the Panel's recommendation, and to provide options for the Board to consider in addressing the Panel's recommendation.

After reviewing and considering the Final Declaration, the Panel's recommendation, and all relevant materials, the Board Accountability Mechanisms Committee (BAMC) concluded that it would be beneficial to receive any new or additional information that the GAC might choose to offer regarding its advice that the Amazon Applications should not proceed. The Board believes that any such new or additional information would assist the Board in conducting a comprehensive re-evaluation of the Amazon Applications in accordance with the Panel's recommendation. The BAMC therefore has recommended that the Board ask the GAC if it has any new or additional information to provide to the Board regarding the GAC's advice that the Amazon Applications should not proceed.

The Board recognizes the importance of this decision and wants to make clear that it takes the results of all ICANN accountability mechanisms very seriously, which is further evidenced by the creation of the new BAMC and why the Panel's recommendation was referred to the BAMC.

Taking this decision is within ICANN's Mission and in furtherance of the public interest as the ultimate result of ICANN's consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board's decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding gTLD disputes, respecting ICANN's accountability mechanisms and advisory committees, and abiding by the policies and procedures set forth in the Applicant Guidebook, which were developed through a bottom-up consensus-

based multistakeholder process over numerous years of community efforts and input.

Taking this decision is not expected to have any direct financial impact on the ICANN Organization. This action will not have any impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

b. Request to Defer Compliance Enforcement of Thick WHOIS Consensus Policy for 180 Days

Whereas, the Thick Whois Consensus Policy requires that all new domain name registrations must be submitted to the registry as "thick" starting on 1 May 2018 at the latest, and all relevant registration data for existing domain names must be migrated from "thin" to "thick" by 1 February 2019.

Whereas, the migration from thin to thick registry model will require Registrars to modify the systems through which they submit registration data to registrars.

Whereas, the Registrar Stakeholder Group expressed concerns about undertaking such modifications pending resolution of issues relating to the European Union's General Data Protection Regulation (GDPR), which may require further system modifications.

Whereas, in preparation to complete the deployment to accept thick Whois data, Verisign, Inc. proposed amendments to the registry-registrar agreements for .COM and .NET in order to have the legal framework necessary for Verisign to begin accepting registrar transmission of thick data to the registry.

Whereas, ICANN organization has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements to implement the Thick Whois Consensus Policy.

Whereas, Verisign and the Registrar Stakeholder Group need additional time to reach agreement on the proposed amendments to the applicable registry-registrar agreements to implement the Thick Whois Consensus Policy.

Whereas, additional time is required to resolve questions regarding application of the GDPR to Whois data.

Resolved (2017.10.29.04), the President and CEO, or his designee(s), is authorized to defer compliance enforcement of the Thick Whois Consensus Policy for 180 days to allow additional time for the registrars and Verisign to reach agreement on amendments needed to applicable

registry-registrar agreements to implement the Policy and for Registrars to undertake system modifications required to enable the thin to thick migration and additional modifications, if any, required for GDPR compliance.

Rationale for Resolution 2017.10.29.04

The Thick Whois Consensus Policy requires registrars to submit thick registration data to the .COM, .NET, and .JOBS registries for all new domain name registrations starting on 1 May 2018 at the latest. The Policy also requires migration of all existing domain registration data from thin to thick by 1 February 2019. In preparation to complete the deployment to accept thick Whois data, Verisign, the registry operator for .COM and .NET and the back-end registry services provider for .JOBS, proposed amendments to the registry-registrar agreements for .COM and .NET in order to have the legal framework necessary for Verisign to begin accepting registrar transmission of thick data to the registry.

The ICANN organization followed its published Registry-Registrar Agreement amendment procedure and forwarded the proposed amendments to the Registrar Stakeholder Group for review. The Registrar Stakeholder Group expressed concerns about agreeing to the proposed amendments based on issues relating to the European Union's General Data Protection Regulation (GDPR), which takes effect on 25 May 2018. As such, the next step outlined in the procedure is for ICANN organization to consult with the registry operator and the Registrar Stakeholder Group to resolve these concerns.

Over the past several months, ICANN organization has been facilitating discussions between Verisign and the Registrar Stakeholder Group to reach agreement on the proposed amendments to the registry-registrar agreements, but the parties have not yet reached agreement. Additionally, ICANN organization is investigating whether there are potential compliance issues under its agreements with registries and registrars because of the General Data Protection Regulation. ICANN organization is working with registries, registrars and various stakeholders to understand these potential compliance issues. Based on initial reviews and communications, including with some data protection agencies, ICANN organization understand that compliance with GDPR will have an impact on the WHOIS system.

On 29 June 2017, ICANN organization approved Verisign's request for an extension to an optional milestone date in the Policy for registrars to begin voluntarily submitting thick data to the registry. This extension was granted to provide Verisign, ICANN, and the Registrar Stakeholder Group with more time to continue discussions in hopes of achieving a resolution, while still taking reasonable steps to comply with the Policy. This optional 1 August 2017 milestone date was extended to 29 November 2017.

To allow additional time for the registrars and Verisign to reach

agreement on amendments needed to the registry-registrar agreements to implement the Policy, the Board is taking action at this time to authorize the ICANN President and CEO to defer compliance enforcement of the Thick Whois Policy for 180 days. This deferred enforcement period will also allow the ICANN organization to continue to engage with the European community (including the European Union Article 29 Working Party), data protection agencies, contracted parties, and other pertinent stakeholders to gain a better understanding of the relevant aspects of GDPR and how it relates to ICANN organization's work, policies and contracts with registries and registrars, including the Thick Whois Policy.

As a result of the Board's action, ICANN organization will begin compliance enforcement of the Policy requirement for registrars to submit all new domain name registrations to the registry as thick starting on 28 October 2018 at the latest, and all relevant registration data for existing domain names must be migrated from thin to thick by 31 July 2019. The optional milestone date for registrars to begin voluntarily submitting thick data to the registry will be 28 May 2018.

During this period of deferred compliance enforcement, ICANN organization will continue to work with Verisign and the Registrar Stakeholder Group to facilitate discussions on the proposed amendments. ICANN organization will also provide updates to the community on the progress to come into compliance with the Thick Whois Policy. During this extension period, the Registrar Stakeholder Group has indicated [PDF, 43 KB] that it will "continue to engage with ICANN and Verisign regarding the RRA changes, ICANN's role under the GDPR, and steps needed to implement the Thick WHOIS transition."

The Board's deliberation on this matter included, but is not limited to, the following significant materials:

- Thick WHOIS Transition Policy for .COM, .NET and .JOBS
- Registry Registration Data Directory Services Consistent Labeling and Display Policy
- PDP Documentation
- PDP WG Final Report [PDF, 1.23 MB]
- Thick WHOIS Implementation
- IRT letter to GNSO regarding implications GDPR to implement Thick WHOIS [PDF, 351 KB]
- Public Comment period on Consistent Labeling and Display implementation proposal
- Public Comment period on Transition from Thin to Thick for .COM, .NET and .JOBS

Letter from Patrick Kane to Akram Atallah re: Thick Whois for .COM and .NET – 20 June 2017 (https://www.icann.org/en/system/files/correspondence/kane-to-atallah-20jun17-en.pdf [PDF, 3.7 MB])

- Letter from Akram Atallah to Patrick Kane re: Thick Whois for .COM and .NET –29 June 2017 (https://www.icann.org/en/system/files/correspondence/atallah-to-kane-29jun17-en.pdf [PDF, 4.04 MB])
- Letter from Graeme Bunton to Akram Atallah re: Extension Request for Thick WHOIS Migration – 17 August 2017 (https://www.icann.org/en/system/files/correspondence/bunton-to-atallah-17aug17-en.pdf [PDF, 43 KB])

This action is in the public interest as it helps to ensure consistent and coordinated implementation of policies in gTLDs, and it is within ICANN's Mission to coordinate the development and implementation of policies.

The Board's action is not anticipated to have a fiscal impact on ICANN that is not already anticipated in the current budget, and will not negatively impact the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function for which no public comment is required.

c. Refinement of string similarity review in IDN ccTLD Fast Track Process

Whereas, the ICANN Board of Directors approved the Final Implementation Plan for IDN ccTLD Fast Track Process on 30 October 2009 (http://www.icann.org/en/minutes/resolutions-30oct09-en.htm#2).

Whereas, as part of a review and update to the Implementation Plan, the ccNSO Council, following the development of the IDN ccTLD String Selection recommendations, requested the ICANN Board to include a two-panel process for string similarity evaluation (http://ccnso.icann.org/node/38787).

Whereas, the ICANN Board of Directors approved the Update to the IDN ccTLD Fast Track Implementation in order to implement the two-panel process for string similarity review. The Extended Process Similarity Review Panel (EPSRP) was approved for inclusion in the IDN ccTLD Fast Track process on 27 June 2013, and ICANN organization was directed to develop the relevant Guidelines and update the Final Implementation Plan accordingly (https://www.icann.org/resources/board-material/resolutions-2013-06-27-en#2.a).

Whereas, following the 2013 update, and upon the request of the relevant applicants, the pending IDN ccTLD strings under the Fast Track

process were evaluated through the EPSRP process, and the EPSRP reports for the three applications were published with evaluation results on the ICANN website on 14 October 2014 (https://www.icann.org/resources/pages/epsrp-reports-2014-10-14-en). One application received a split result, based on evaluations of potential confusion in both lowercase and uppercase representations of the applied-for string.

Whereas, public feedback was received during the third annual review of the IDN ccTLD Fast Track process on issues related to the experimental methodology and results reported by the EPSRP, including the interpretation of the EPSRP's split recommendations on confusing similarity in regards to uppercase and lowercase forms of the applied-for string (https://www.icann.org/public-comments/idn-cctld-fast-track-2015-01-15-en).

Whereas, following the public comment for the third annual review, on 25 June 2015 the ICANN Board resolved to ask the ccNSO, in consultation with other stakeholders, including GAC and SSAC, to provide further guidance on and refinement of the methodology of second string similarity review process (https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.a).

Whereas, in response to a letter from the Board seeking additional clarifications the ccNSO and SSAC provided a joint response on 19 September 2017, proposing changes to the Final Implementation Plan for the IDN ccTLD Fast Track Process.

Resolved (2017.10.29.05), the Board thanks the ccNSO, GAC and SSAC for collaborating to address the issue related to string similarity review and for developing the "Joint ccNSO SSAC Response to ICANN Board on EPSRP".

Resolved (2017.10.29.06), the Board approves amending the Final Implementation Plan for IDN ccTLD Fast Track Process as suggested in the Joint ccNSO SSAC Response. The President and CEO, or his Designee(s), is directed to incorporate the amendment into the Implementation Plan previously adopted by the Board on 30 October 2009 (and amended on 5 November 2013) and implement the amendment as soon as practicable.

Rationale for Resolutions 2017.10.29.05 – 2017.10.29.06

Why the Board is addressing the issue?

On 5 November 2013, ICANN organization published an updated Final Implementation Plan for the IDN ccTLD Fast Track Process [PDF, 851 KB] including the Guidelines [PDF, 86 KB] for the Extended Process Similarity Review Panel (EPSRP), implementing the two-panel string similarity review, as per the resolution by the Board on 27 June 2013.

Following the update, three eligible IDN ccTLD Fast Track applicants, for Bulgaria (in Cyrillic), European Union (in Greek) and Greece (in Greek), exercised their option to undergo the second similarity review. The EPSRP completed the review and ICANN organization published these reports on 14 October 2014.

For each application, the EPSRP documented its findings with respect to the applied-for string. The reports each included a detailed description of the methodology and results of the experiments for string similarity. The EPSRP did not aggregate its findings for a string based on experiments conducted on uppercase and lowercase forms of the string. The EPSRP concluded that from a visual similarity point of view, uppercase and lowercase characters are distinct entities. And given that there is no scientific or policy basis as to how to combine results of uppercase and lowercase similarity found for IDN ccTLDs, the EPSRP could only provide separate recommendations for each of these forms. Therefore, where the findings of the EPSRP are split based on different findings for confusing similarity for uppercase and lowercase forms of a string, there is no mechanism to deduce single aggregated recommendation of the second string similarity review done by EPSRP.

Based on this experience of the EPSRP analysis, during the third review of the IDN ccTLD Fast Track Process, the community provided public comments raising issues regarding the methodology of the EPSRP, including the assessment of split recommendations (e.g., confusing similarity in uppercase but not in lowercase).

To address these comments, the Board (through resolution 2015.06.25.16) asked the ccNSO, in consultation with other stakeholders, including GAC and SSAC, to provide further guidance on and refinement of the methodology of second string similarity review process, including the interpretation of split recommendations, to be applied to the relevant current and subsequent cases in the IDN ccTLD Fast Track Process as well as to inform the proposed policy for the selection of the IDN ccTLD strings.

The relevant working group of the ccNSO, in collaboration with GAC members, published its report [PDF, 274 KB] for a public comment before finalization. SSAC submitted an alternative view in SAC 084 [PDF, 218 KB] and then in SAC 088 [PDF, 72 KB] and SAC 089 [PDF, 128 KB]. At the request of the Board the ccNSO and SSAC worked together to reach a solution, which ccNSO and SSAC chairpersons provided as a joint response [PDF, 215 KB] to the Board on 19 September 2017.

With this resolution, the Board now concludes the 2015 review of the Fast Track program and moves forward with the update to the Final Implementation Plan for the IDN ccTLD Fast Track Process as suggested in the joint ccNSO and SSAC response. Addressing this issue is aligned with ICANN's Mission as stated at Section 1.1(a)(i) of the ICANN Bylaws: "Coordinates the allocation and assignment of names in

the root zone of the Domain Name System." With this outstanding issue cleared, the review cycle for the Implementation Plan can now commence.

What concerns or issues were raised by the community?

SSAC provided initial input in SAC 084 [PDF, 218 KB] and further clarified in SAC 088 [PDF, 72 KB] and SAC 089 [PDF, 128 KB] that in case of a split recommendation "the default finding should be to reject the label if confusability exists in either form", maintaining that the use of principles of conservatism, inclusion and stability following RFC 6912 be applied to processes like EPSRP. However, the ccNSO Council noted the Unicode Technical Report # 36: Unicode Security Considerations states that the "use of visually confusable characters in spoofing is often overstated … [which] account for a small proportion of phishing problems" which may be mitigated by measures suggested in the Unicode report. In joint response, the ccNSO and the SSAC agree on a process to address the concerns raised by SSAC by allowing the requester to propose measures to be reviewed by experts to determine if confusable similarity is effectively mitigated.

What significant materials did the Board review?

The Board has reviewed various materials and factors in its deliberations and in taking its action today. The relevant and significant materials include, but are not limited to, the following:

- Final Implementation Plan for IDN ccTLD Fast Track Process [PDF, 851 KB] - 5 Nov. 2013
- Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the IDN ccTLD Fast Track Process [PDF, 86 KB] - 4 Dec. 2013
- Unicode Technical Report # 36: Unicode Security Considerations – 19 September 2014
- Extended Process Similarity Review Panel (EPSRP) Reports for IDN ccTLD Applications – 14 October 2014
- Public comments on the annual review of the IDN ccTLD Fast Track process – 17 March 2015
- The ICANN Board Resolution 2015.06.25.16 – 25 June 2015
- The response to the public comment on the draft report [PDF, 274 KB] by the WG on EPSRP – 20 July 2016
- SAC 084: SSAC Comments on Guidelines for the Extended Process Similarity Review Panel for the IDN ccTLD Fast Track Process [PDF, 218 KB] - 31 August 2016
- GAC comment on EPSRP Working Group – Public Comment

[PDF, 261 KB] – 28 September 2016

- SAC 088: SSAC Response to ccNSO Comments on SAC084 [PDF, 72 KB] - 06 November 2016
- GAC Advice to Board, Point 7, in the GAC Communiqué at ICANN 57 [PDF, 638 KB] – 8 November 2016
- SAC 089: SSAC Response to ccNSO Comments on SAC084 [PDF, 128 KB] - 12 December 2016
- ccNSO Letter to ICANN Board re: EPSRP Final Report – 30 January 2017
- ccNSO WG on EPSRP – Final Report [PDF, 894 KB] – 6 January 2017
- Joint ccNSO SSAC Response to ICANN Board [PDF, 215 KB] - 19 September 2017

What factors did the Board find to be significant?

The Board has noted that the ccNSO and the SSAC members have worked together to converge on an effective mechanism, which addresses the competing concerns raised during the process. IDN ccTLD requestor should propose effective risk mitigation measures to address the security concerns earlier raised by the SSAC.

Are there positive or negative community impacts?

This decision has a positive impact because it clarifies the ambiguity in the second similarity review guidelines, in case of a split recommendation, allowing IDN ccTLD string evaluations to proceed so long as effective risk mitigation measures can be determined and implemented. This decision also supports the public interest through expanding the potential availability of IDN ccTLDs to additional countries and territories in support of local Internet users.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

Upon implementation, there are fiscal impacts because ICANN organization must engage relevant experts to review the mitigation strategies proposed by the requestor.

Are there any security, stability or resiliency issues? What concerns or issues were raised by the community?

The joint response from the SSAC and ccNSO explains that there are four ways uppercase and lowercase forms of the applied-for string can be found confusingly similar. In the first case where neither is found confusingly similar, the string should pass the evaluation. In the second and third cases where the lower case is found confusingly similar,

whether uppercase is found confusingly similar or not, the associated risks are too high and difficult to mitigate, so the string should not pass. In the fourth case, where lowercase is not similar but uppercase is confusingly similar, SSAC notes a cautionary approach is appropriate. The joint response notes that SSAC's view is that risk is a continuum and in this fourth case cautionary approach could be for the IDN ccTLD requestor to propose mitigation measures, which are deemed sufficient to reduce the risks to an acceptable level by relevant experts. Only then the string can pass the string similarity evaluation.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

The update suggested by ccNSO was already subject to required public comment after the initial report was drafted. The comments included a response from the GAC in support of the findings and a response from SSAC through SSAC 084 with further responses in SAC 088 and SAC 089 suggesting an alternative approach. To overcome the diverging views that manifested following the public comment, ccNSO and SSAC have worked together to clarify their positions and find common ground, which is presented in their joint response to the Board. Further public comment is not needed to incorporate the adjustment suggested in Final Implementation Plan for the IDN ccTLD Fast Track Process by the joint ccNSO and SSAC response. This is an Organizational Administrative Function for which no public comment is required.

Published on 29 October 2017

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[1] BGC Determination on Request 15-21, at Pg. 1, https://www.icann.org/en/system/files/files/reconsideration-15-21-dotgay-bgc-determination-01feb16-en.pdf [PDF, 272 KB].

[2] Prior to 22 July 2017, the BGC was tasked with reviewing reconsideration requests. *See* ICANN Bylaws, 1 October 2016, Art. 4, § 4.2(e), https://www.icann.org/resources/pages/bylaws-2016-09-30-en#article4. Following 22 July 2017, the Board Accountability Mechanisms Committee (BAMC) is tasked with reviewing and making recommendations to the Board on reconsideration requests. *See* ICANN Bylaws, 22 July 2017, Art. 4, § 4.2(e), https://www.icann.org/resources/pages/governance/bylaws-en/#article4.

[3] BGC Determination on Request 15-21, at Pg. 1.

[4] Request 16-3, https://www.icann.org/en/system/files/files/reconsideration-16-3-dotgay-request-17feb16-en.pdf [PDF, 728 KB].

[5] Request 16-5, https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-request-redacted-24feb16-en.pdf [PDF, 1.06 MB].

ICANN Responses to DIDP Requests No. 20170505-1 (DotMusic Ltd.), and 20170518-1 (dotgay LLC), incorporated by reference in ICANN's Response to DIDP Request No. 20170610-1 at Pg. 2.

[7] As the BAMC noted, the Requestors indicated (by checking the corresponding box on the Reconsideration Request Form) that Request 17-4 seeks reconsideration of staff and Board action or inaction. However, but for a passing reference to Article 4, Section 4.2(o) of ICANN's Bylaws, which states that the BAMC "shall . . . provide[] to the Requestor" any information "collected by ICANN from third parties" that is relevant to the Reconsideration Request", the Requestors make no further arguments concerning the BAMC's actions or inactions. The Requestors also do not ask ICANN organization to take any action concerning this issue. Rather, the Requestors focus on ICANN organization's Response to Joint DIDP Request. Accordingly, the BAMC interpreted Request 17-4 to seek reconsideration of ICANN organization's response to the Joint DIDP Request, and not reconsideration of BAMC action or inaction, and the Board agrees. (*See* BAMC Recommendation [PDF, 273 KB], Pgs. 12-13.)

[8] Reconsideration also is appropriate if the requestor shows that it was adversely affected by Board or Staff action or inaction taken without consideration of material information, or taken as a result of reliance on false or inaccurate relevant information. (ICANN Bylaws, Art. 4, Section 4.2(c)(ii), (iii).)

Ex. R-25

RESPONDENT'S EXHIBIT

Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative

Approved Board Resolutions | Regular Meeting of the ICANN Board

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12 Sep 2021

1. **Main Agenda:**
   a. **New gTLD Subsequent Procedures Operational Design Phase (ODP): Scoping Document, Board Resolution, Funding and Next steps**
      - *Rationale for Resolutions 2021.09.12.01 – 2021.09.12.02*

   b. **GAC Advice: ICANN71 Virtual Policy Forum Communiqué (June 2021)**
      - *Rationale for Resolution 2021.09.12.03*

   c. **Los Angeles Office Lease Period**

   d. **AOB**

2. **Executive Session:**
   a. **Ombudsman FY21 At-Risk Compensation**
      - *Rationale for Resolutions 2021.09.12.06 – 2021.09.12.07*

   b. **Update on Independent Review Process re: Application for .GCC**
      - *Rationale for Resolutions 2021.09.12.08 - 2021.09.12.09*

   c. **President And CEO Goals for FY22**
      - *Rationale for Resolution 2021.09.12.10*

1. Main Agenda:

a. New gTLD Subsequent Procedures Operational Design Phase (ODP): Scoping Document, Board Resolution, Funding and Next steps

Whereas, on 18 February 2021 the GNSO Council approved the Affirmations, Recommendations, and Implementation Guidance (collectively, referred to as "Outputs") that were determined to have received either Full Consensus or Consensus designations as documented in its New gTLD Subsequent Procedures Policy Development Process

Policy
Operational Design Phase (ODP)
Implementation
Public Comment
Root Zone KSK Rollover
Technical Functions
ICANN Locations
Help

Whereas, the Board has begun its deliberations to consider whether the Outputs in the New gTLD Subsequent Procedures Final Report are in the best interests of the ICANN community or ICANN.

Whereas, the Board wishes to utilize the Operational Design Phase (ODP) process to assess all of the Final Report Outputs and to gather more information as part of its deliberations.

Whereas, the ODP for the Final Report Outputs will be an initiation and an integral part of the preparation work for a possible next application round for new gTLDs based on the existing new gTLD policy of 2008, as modified by the GNSO Subsequent Procedures recommendations, if and when those recommendations are approved, and the costs incurred during the ODP phase are considered part of the necessary development costs for that possible next round.

Whereas, the ICANN President and CEO and the Board Caucus on the New gTLD Subsequent Procedures Policy Development Process have recommended that the Board authorize the President and CEO, or his designee(s), to initiate and conduct an ODP on all of the Final Report Outputs from the New gTLD Subsequent Procedures Policy Development Process.

Whereas, the Board recognizes that the ODP is a significant undertaking and will require a considerable amount of ICANN org resources to execute, thereby creating the need for a range of US$7-$9M in spending to fund the necessary resources.

Whereas, the ICANN President and CEO and the Board Finance Committee have recommended that the Board authorize the President and CEO, or his designee(s), to spend up to US$9M to fund the resources needed for ICANN org to initiate and conduct the ODP and any additional related work that may be required to support the ICANN Board's consideration of the New Generic Top Level Domain (gTLD) Subsequent Procedures Policy Development Process Final Report.

Resolved (2021.09.12.01), the Board directs the President and CEO, or his designee(s), to conduct the Operational Design Phase (ODP) by addressing the questions outlined in the New gTLD Subsequent Procedures Operational Design Phase Scoping Document. The Board further directs the President and CEO, or his designees(s), to take the steps needed to organize the resources required to begin work on the ODP, and to advise the Board when the work of the ODP is initiated within the organization. The Board requests regular updates on the progress of the work and delivery of the Operational Design Assessment (ODA), the expected output of the ODP, within ten months from the date of initiation, provided that there are no unforeseen matters that could affect the timeline, of which any such matters are to be communicated to the Board immediately upon identification.

Resolved (2021.09.12.02), the Board authorizes the President and CEO, or his designee(s), to contract for, make disbursements for, or spend, on any one or more pieces of work**,** a total of up to US$9M to fund the internal project needed for initiation of the ODP, the execution of the ODP including community engagement, formation and delivery of an ODA to the Board, and any additional related work that may be required to support the ICANN Board's consideration of the New Generic Top Level Domain (gTLD) Subsequent Procedures Policy Development Process

Final Report until such a time when the ICANN Board has made its determination regarding said report. This work is considered the initiation and an integral part of the preparation for the next round, and its costs part of the development costs for the next round. The source of the funding for the ODP is intended to be the New gTLD Program funds, composed of the remaining funds of the 2012 round.

Rationale for Resolutions 2021.09.12.01 – 2021.09.12.02

Why is the Board addressing the issue?

The Board is taking action today to take a key step as part of the Board's requirement to consider the consensus policy recommendations and other outputs approved by the GNSO Council to enable moving forward with subsequent rounds of new gTLDs. Due to the required resource investment and complexity of the Affirmations, Recommendations, and Implementation Guidance (collectively, referred to as "Outputs") that were determined to have received either Full Consensus or Consensus designations as documented in the New Generic Top Level Domain (gTLD) Subsequent Procedures Policy Development Process Final Report ("Final Report"), initiating an ODP for the Final Report Outputs is essential to inform the Board's deliberations, including whether the recommendations are in the best interests of the ICANN community or ICANN, as noted above. The ODP will assess the potential risks, anticipated costs, resource requirements, timelines, and other matters related to implementation of the Final Report, as detailed in the New gTLD Subsequent Procedures Operational Design Phase Scoping Document. The ODP will provide additional transparency into the information provided to and considered by the ICANN Board in support of its obligation to act on the Final Report in accordance with the ICANN Bylaws.

What is the proposal being considered?

The Board is taking action to initiate the ODP and directs ICANN org to prepare an assessment of the operational requirements and impact of the Final Report Outputs according to the scope specified by the Board for the purpose of facilitating the Board's determination of the recommendations.

Which stakeholders or others were consulted?

The Board followed closely relevant stakeholder discussions related to a possible launch of an ODP for the Subsequent Procedures Final Report Outputs.[1] During ICANN71, The Board also had constructive exchanges on this topic in its meetings with the GAC. The Board also notes that during ICANN71 ICANN org provided the GAC with an update on the status of a potential ODP for the Subsequent Procedures Final Report Outputs and on 24 June 2021, the ICANN Board had a similar discussion with the GNSO Council.

The Board will consider community input on the substance of the Final Report once the Operational Design Phase has concluded and the Board is considering the approval of the Final Report.

What concerns or issues were raised by the community?

Some groups within the ICANN community have raised concerns regarding a potential Board request for an ODP for the New gTLD Subsequent Procedures Final Report Outputs. The three main concerns raised are:

- The time it will take to conduct an ODP may lead to delays in the launch of subsequent rounds of new gTLDs.
- The need to address dependencies before the application window for subsequent rounds of new gTLDs opens.
- Concern that the ODP assessment may inappropriately impact the intention or substance of the New gTLD Subsequent Procedures Final Report Outputs

The Board acknowledges the community's concerns and considered them prior to taking its decision to move forward with requesting an ODP. In evaluating the concerns, the ICANN Board considered that the work done during the ODP is expected to streamline the implementation phase due to the investment in advance preparations, and thus not lead to delays in the launch of subsequent application rounds. Additionally, the ICANN Board considered that the ODP is expected to address the concerns as it provides the opportunity to define, clarify, and resolve dependencies and the ODP has built in protections, such as the ICANN Board setting the limited scope of the ODP and the inclusion of a GNSO liaison as part of the ODP process to identify any policy questions that may arise during the course of the ODP.

What significant materials did the Board review?

The Board reviewed the Final Report, including minority statements, to decide whether the complexity of the outputs merits the launch of an Operational Design Phase to better inform the Board's determination whether the recommendations are in the best interest of the ICANN community or ICANN, as noted above. The Board has also reviewed the public comments received in the comment period from 22 April 2021 to 1 June 2021. The Board will ultimately consider these inputs, as well as the Operational Design Assessment derived during the Operational Design Phase, as well as other relevant materials, in its determination on the Outputs in the Final Report.

What factors did the Board find to be significant?

To help facilitate the Board's determination whether the Outputs contained in the Final Report are in the best interest of the ICANN Community or ICANN, as noted above, the Board considered the following factors to be significant:

1. The volume and complexity of the Final Report Outputs:
    - The Final Report contains over three hundred Outputs.
    - Not all of the Final Report Outputs were approved by the GNSO Council.
    - Significant demand on resourcing to implement the Final Report Outputs.

2. The value of assessing the Final Report Outputs as a whole rather than on an individual basis:
    - A significant number of the Outputs are interrelated or have dependencies.
    - Some rules and procedures from the 2012 round have been reaffirmed, others have been amended, and others are new.
3. A need to understand what resourcing is required to launch subsequent rounds of new gTLDs based on the Outputs contained in the Final Report:
    - An overview of expected costs, including staffing, contracting, systems, and other long-term costs involved in implementing and operating future rounds is important for organizational planning.
    - This includes an overview of one-off costs versus those that will be ongoing.

Are there positive or negative community impacts?

The overall impact of the ODP on the community is positive. The ODP will provide additional transparency into the Board's consideration of the SubPro PDP Working Group's Outputs: the ODP is a transparent process and the community will be kept updated throughout. The ODP team will provide regular updates via webinars, blogs, dedicated webpage presence, community sessions, and progress updates, thereby further enhancing transparency.

ICANN org will also seek appropriate community feedback on the facts, figures, and assumptions that will be included in its ODP assessment, providing the community with an opportunity to submit feedback on the materials the Board will review before its decision. While the conduct of the ODP may extend the time the Board will take to resolve on the Outputs, the ODA, which includes a high-level, end-to-end operational design model of the Outputs, will become an invaluable tool to help streamline the implementation timeline.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

Initiating and conducting an ODP for the Subsequent Procedures Final Report Outputs is a significant undertaking and will require a considerable amount of ICANN org resources. The President and CEO and the Board Finance Committee (BFC) recommended that the ICANN Board authorize a range of US$7-$9M in spending to fund the needed resources[2].

The resolution includes approval to spend up to US$9M to fund the additional resources required to initiate and conduct the ODP. The ICANN Board approved the upper limit of the estimated US$7M-$9M to provide the ICANN org with the maximum flexibility to ensure prudent planning and to minimize time during the ODP in the event that org would need to come back to the Board to request additional funding.

The ODP for the Subsequent Procedures Final Report will be an integral part of the preparation work for the next round of subsequent procedures for new gTLDs and will be incurred

regardless. As such, the costs incurred during the ODP phase are considered part of the development costs for the next round and will be incurred regardless.

The funding to pay for such development costs, including those for an ODP for the Subsequent Procedures Final Report, will come from the new gTLD application round remaining application fees. These funds are intended to be used on the program, are not specifically earmarked for a specific round, and are therefore being recommended to fund the ODP relating to this new round.

ICANN org is working under the general assumption that there will be subsequent rounds of new gTLDs. The estimated resource requirements for the ODP have been calculated to ensure that, under the assumption there will be future rounds, following a Board decision regarding the New Generic Top Level Domain (gTLD) Subsequent Procedures Policy Development Process Final Report, ICANN org will be well positioned to not only support the ODP itself, but to use the additional resources to support implementation planning, implementation, and ongoing operations of the approved policy recommendations.

A key component of the anticipated resource expenditures will be additional staffing for ICANN org to increase its capacity to meet the additional demand on resources. ICANN org will be seeking a combination of temporary staff and FTEs to support the ODP, which will vary and be dictated by the type and duration of the work being performed. Each FTE or temporary resource translates to approximately 1,800 working hours per year. ICANN org will leverage the opportunity, where needed and appropriate, to begin hiring and training full-time staff to support the ODP and who will be trained and ready to support implementation planning, implementation, and ongoing operations following the Board's decision regarding the Subsequent Procedures Final Report. In cases where the additional staff resource requirements are shorter term or less permanent, ICANN org will leverage the most appropriate staffing solution.

ICANN org will also utilize the approved funds to seek outside support and expertise where relevant, e.g., regarding legal matters, operational support, and technical matters. In light of the ICANN Board's 15 July 2021 resolution, ICANN org included in its estimated resource requirements a line item to investigate whether it is feasible for ICANN org to facilitate small in-person or hybrid community meeting(s), should travel and meeting conditions allow, to begin generating awareness in underserved regions regarding the potential opportunity of subsequent rounds, to initiate discussions regarding how ICANN org will provide support for linguistic needs and Internationalized Domain Names, and to provide information regarding ICANN's mission and the goals of the new gTLD initiative.

As this ODP request will be funded from the New gTLD Program fund, a specific source of funds that is separate from ICANN org's day-to-day funding source, the risk that conducting this will have a negative impact on ICANN org's operations is mitigated.

ICANN org's Strategic and Operating plans include goals and initiatives, respectively, which are directly tied to the work of the Subsequent Procedures PDP Working Group and the preparation for new gTLD application rounds. The request for an ODP assessment of the Final Report

Outputs from the Subsequent Procedures PDP is in alignment with ICANN org's overall planning and communications regarding both the Strategic and Operating plans.

Throughout the ODP, ICANN org will provide the community with periodic updates, opportunities to provide feedback, and an opportunity to review the work, thereby impacting community member resources as well.

Are there any security, stability or resiliency issues relating to the DNS?

The ODP will consider the impact that the Outputs may have on the security, stability or resiliency of the DNS, including from both an operational perspective and a risk perspective.

Is this decision in the public interest and within ICANN's mission?

As part of the ODP, the Board will explore public interest considerations, if any, that could result from implementation of the Final Report Outputs. The mechanism that will be used for ascertaining the public interest is the Global Public Interest Framework that was developed in collaboration with the ICANN community and Board, and that the Board agreed to pilot in FY21. The Framework will only be used as an evaluative tool for the Outputs.

Under ICANN's Mission, Commitments, and Core Values, ICANN is tasked with the following:

- Operating with efficiency and excellence, in a fiscally responsible and accountable manner.
- Promoting and sustaining a competitive environment in the DNS market, where feasible, and introducing and promoting competition in the registration of domain names, where practicable and beneficial to the public interest.
- Coordinating the allocation and assignment of names in the root zone of the Domain Name System and coordinating the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

This is an Organizational Administrative Function that does not require public comment, but it should be noted that the Final Report Outputs were the subject of public comment, and the ODP Process was developed in collaboration with the ICANN community. Additionally, the ODP itself is an open and transparent process and it is foreseen that stakeholders will be able to provide comments and feedback throughout the design phase.

b. GAC Advice: ICANN71 Virtual Policy Forum Communiqué (June 2021)

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN71 Virtual Policy Forum and issued advice to the ICANN Board in a Communiqué on 21 June 2021 (ICANN71

Virtual Policy Forum Communiqué).

Whereas, the ICANN71 Virtual Policy Forum Communiqué was the subject of an exchange between the Board and the GAC on 29 July 2021.

Whereas, in a 27 July 2021 letter, the GNSO Council provided its feedback to the Board concerning advice in the ICANN71 Virtual Policy Forum Communiqué relevant to International Governmental Organizations (IGO) Protections; Competition, Consumer Trust and Consumer Choice Review (CCT) Review Recommendations; Expedited Policy Development Process (EPDP) Phase 1 Policy Implementation, and Privacy Proxy Services Accreditation Implementation.

Whereas, the Board developed a scorecard to respond to the GAC's advice in the ICANN71 Virtual Policy Forum Communiqué, taking into account the dialogue between the Board and the GAC and the information provided by the GNSO Council.

Resolved (2021.09.12.03), the Board adopts the scorecard titled "GAC Advice – ICANN71 Virtual Policy Forum Communiqué: Actions and Updates (12 September 2021)" in response to items of GAC advice in the ICANN71 Virtual Policy Forum Communiqué.

Rationale for Resolution 2021.09.12.03

Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." In its ICANN71 Virtual Policy Forum Communiqué (21 June 2021), the GAC issued advice to the Board on IGO protections. The GAC also provided follow-up to previous advice regarding CCT Review Recommendations, EPDP Phase 1 Policy Implementation, and Privacy Proxy Services Accreditation Implementation. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The Board is taking action today on the GAC Consensus Advice to the ICANN Board in the ICANN71 Virtual Policy Forum Communiqué, including the items related to IGO Protections.

The Board's actions are described in the scorecard dated 12 September 2021.

In adopting its response to the GAC advice in the ICANN71 Virtual Policy Forum Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- ICANN71 Virtual Policy Forum Communiqué (21 June 2021): https://www.icann.org/en/system/files/correspondence/gac-to-icann-21jun21-en.pdf

- The GNSO Council's review of the advice in the ICANN71 Virtual Policy Forum Communiqué as presented in the 27 July 2021 letter to the Board: https://www.icann.org/en/system/files/correspondence/fouquart-to-icann-board-27jul21-en.pdf

The adoption of the GAC advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. This is an Organizational Administrative function that does not require public comment.

c. Los Angeles Office Lease Period

Whereas, the Board resolution passed on 22 July 2021 approving the Los Angeles Office Lease Renewal, contained a minor discrepancy in that it referred to a 10-year lease term, but the actual lease term is 129 months (10 years and nine months).

Whereas, ICANN organization has recommended that the Board authorize the President and CEO, or his designee(s), to take all necessary actions to correct the term of lease from 10 years to 129 months as referenced in the Los Angeles Office Lease Renewal resolution and rationale.

Resolved (2021.09.12.04) the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to change references in the Los Angeles Office Lease Renewal resolution and rationale about the term of lease from 10 years to 129 months (10 years and nine months).

Resolved (2021.09.12.05), the remainder of the Los Angeles Office Lease Renewal resolution and rationale not referencing the term of the lease shall remain in full force and effect, including the Board's approval to enter into the new lease as set forth in the Los Angeles Office Lease Renewal Board resolution.

d. AOB

2. Executive Session:

a. Ombudsman FY21 At-Risk Compensation

Whereas, the Compensation Committee recommended that the Board approve payment to the Ombudsman of his FY21 at-risk compensation.

Resolved (2021.09.12.06), the Board hereby approves a payment to the Ombudsman of his FY21 at-risk compensation component.

Resolved (2021.09.12.07), portions of this action by the Board shall remain confidential as an

"action relating to personnel or employment matters", pursuant to Article 3, section 3.5b of the ICANN Bylaws.

Rationale for Resolutions 2021.09.12.06 – 2021.09.12.07

Annually the Ombudsman has an opportunity to earn a portion of his compensation based on specific performance goals set by the Board, through the Compensation Committee. This not only provides incentive for the Ombudsman to perform above and beyond his regular duties, but also leads to regular touch points between the Ombudsman and Board members during the year to help ensure that the Ombudsman is achieving his goals and serving the needs of the ICANN community.

Evaluation of the Ombudsman's objectives results from both the Ombudsman self-assessment as well as review by the Compensation Committee, leading to a recommendation to the Board with which the Board agrees.

Evaluating the Ombudsman's annual performance objectives is in furtherance of the goals and mission of ICANN and helps increase the Ombudsman's service to the ICANN community, which is in the public interest.

While there is a fiscal impact from the results of the scoring, that impact was already accounted for in the FY21 budget. This action will have no impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

b. Update on Independent Review Process re: Application for .GCC

Whereas, GCCIX, W.L.L. (the applicant for .GCC) initiated an Independent Review Process (IRP) challenging the ICANN Board's acceptance of Governmental Advisory Committee (GAC) consensus advice that the .GCC application should not proceed.

Whereas, in light of certain prior IRP Panel Declarations, the Board Accountability Mechanisms Committee (BAMC) discussed whether, in advance of proceeding with the current .GCC IRP, it would be helpful to seek further information from the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Whereas the BAMC recommended that the Board authorize the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Resolved (2021.09.12.08), the Board authorizes the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Resolved (2021.09.12.09), this resolution shall remain confidential pursuant to Article 3, sections 3.5(b) and (d) of the ICANN Bylaws until it is otherwise determined that it can be

published.

Rationale for Resolutions 2021.09.12.08 - 2021.09.12.09

After careful review of the underlying facts, prior applicable IRP Panel Declarations, and the BAMC's recommendation, the Board has concluded that, before proceeding further with the .GCC IRP, it could be beneficial to ask the GAC for any new or additional information that the GAC might choose to offer regarding its advice that the .GCC application should not proceed. The Board, therefore, authorizes the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

Background Information[3]

In 2012, GCCIX submitted an application to operate a .GCC gTLD, stating in part:

> GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf.[4]

Given this lack of connection with, and lack of support from, the Gulf Cooperation Council, which is commonly referred to as the "GCC," the GCC, along with the governments of Bahrain, Oman, Qatar and UAE, issued a GAC Early Warning in November 2012 expressing "serious concerns" regarding GCCIX's .GCC application because the applied-for gTLD "matches a name of an Intergovernmental Organization" (IGO), namely, the GCC, and "[lacks] . . . community involvement and support," noting that the .GCC application "clearly shows that the applicant is targeting the GCC community which basically covers the 6 member states of the GCC."

In March 2013, the GCC filed a Legal Rights Objection (LRO) with the World Intellectual Property Organization Arbitration and Mediation Center (WIPO) against GCCIX's application, claiming that the .GCC application takes advantage of the distinctive character and reputation of the "GCC" acronym and creates a likelihood of confusion between the applied-for gTLD and the GCC's IGO acronym.

In April 2013, the GAC issued the Beijing Communiqué, which provided GAC consensus advice that the application for .GCC should not proceed. The New gTLD Program Committee (NGPC) accepted the GAC consensus advice on the .GCC application in June 2013 and removed the application from further processing.[5] The NGPC's rationale was based upon the Guidebook provision stating that GAC consensus advice against an application creates "a strong presumption for the ICANN Board that the application should not be approved." (Guidebook at § 3.1(I).) GCCIX filed Reconsideration Request 13-17 challenging the NGPC's acceptance of the GAC consensus advice on the .GCC application, which was denied by the Board Governance Committee (BGC).

After engaging in the Cooperative Engagement Process for several years, GCCIX filed an IRP Request in June 2021. Among other claims, GCCIX alleges that the NGPC violated ICANN's Articles of Incorporation (Articles) and Bylaws by accepting the GAC advice on .GCC "despite

[a] lack of any rationale provided by GAC for its advice" and by failing "to request [a] rationale from the GAC, investigate the matter or otherwise consider the public interest" before accepting the GAC advice. (IRP Request at 18.) GCCIX also alleges that the NGPC acted contrary to the Articles and Bylaws by "refus[ing] to provide any rationale for the NGPC decision to accept GAC advice." (IRP Request at 18.) In addition, GCCIX claims that the BGC violated ICANN's Articles and Bylaws by denying GCCIX's "Request for Reconsideration as to the above actions and inactions, without providing any additional analysis or rationale, or conducting any further investigation."[6] (IRP Request at 18.) Finally, GCCIX alleges that the IRP Declarations in the .AFRICA and .AMAZON IRPs are precedential, binding on ICANN, and are dispositive on the claims asserted by GCCIX regarding the actions of the NGPC and BGC in accepting the GAC consensus advice noted above. (IRP Request at 16-17, 19, 27-28, 29.)

ICANN has generally followed a practice of not taking any actions on applications that are the subject of a pending Accountability Mechanism out of deference to ICANN's Accountability Mechanisms. However, [*REDACTED – PRIVILEGED & CONFIDENTIAL*], the Board has determined that, under these circumstances, this is an opportunity to consider alternatives to that general practice. Accordingly, before proceeding further with the .GCC IRP, the BAMC carefully considered options regarding next steps and concluded that it could be beneficial to ask the GAC for any new or additional information that the GAC might choose to offer regarding its advice that the .GCC application should not proceed. The BAMC therefore has recommended that the Board authorize the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application.

The Board agrees with this approach and notes that such discussions with the GAC (if the GAC is open to such discussions) could provide valuable information that may be beneficial to reaching a determination as to the next steps regarding the .GCC IRP and the .GCC application.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures. This accountability includes having a process in place by which a person or entity materially affected by an action of the ICANN Board or staff may request reconsideration of that action or inaction by the Board. This action should have no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

c. President And CEO Goals for FY22

Whereas, the Compensation Committee has worked with the President and CEO to develop a set of performance goals for FY22.

Resolved (2021.09.12.10), the Board hereby approves performance goals for the President and

CEO for FY22.

Rationale for Resolution 2021.09.12.10

When the President and CEO was hired, he was offered a base salary, plus an at-risk component of his compensation package. This same structure exists today. Consistent with all personnel with the ICANN organization, the President and CEO is to be evaluated against specific performance goals, which the President and CEO sets in coordination with the Compensation Committee and the Board.

The Compensation Committee discussed a set of performance goals for the President and CEO for FY22, some of which were proposed by the President and CEO and some were proposed by the Compensation Committee. The Board has evaluated these goals and agrees that they are appropriate and consistent with ICANN's Strategic and Operating plans.

Taking this decision is in furtherance of ICANN's Mission and is in the public interest in that the President and CEO's performance goals are fully consistent with ICANN's Strategic and Operating plans.

The decision to adopt FY22 performance goals for the President and CEO will not have a direct fiscal impact on ICANN until it is determined to pay him his at-risk payment after the first half of FY22, and any such impact is contemplated in the FY22 budget. This decision will not have an impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

Published on 14 September 2021

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[1] https://71.schedule.icann.org/meetings/efyH4vdrQbmm2QHGK#/?limit=10&sortByFields[0]=isPinned&sortByFields[1]=lastActivityAt&sortByOrders[0]=-1&sortByOrders[1]=-1&uid=sRMo5hmLvvdHjHkao; https://71.schedule.icann.org/meetings/e4rKih5BHGtkz3X9Z#/?limit=10&sortByFields[0]=isPinned&sortByFields[1]=lastActivityAt&sortByOrders[0]=-1&sortByOrders[1]=-1&uid=sRMo5hmLvvdHjHkao; https://71.schedule.icann.org/meetings/JHh7cZinAZMYutQ33#/?limit=10&sortByFields[0]=isPinned&sortByFields[1]=lastActivityAt&sortByOrders[0]=-1&sortByOrders[1]=-1&uid=sRMo5hmLvvdHjHkao.

[2] Appendix A to this Board paper includes additional detail about the estimated range of spending to fund the ODP.

[3] Further background information is provided in the accompanying Reference Materials.

[4] The Cooperation Council for the Arab States of the Gulf is also known as the Gulf Cooperation Council. Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Its main objectives are to enhance coordination, integration and inter-connection between its members in different spheres. This application is not connected with or sponsored by the Council. .GCC does not purport to represent the Council.

[5] At the time that the NGPC accepted the GAC consensus advice on the .GCC application, the LRO proceeding against the application was pending. WIPO, the LRO provider for this matter, sought ICANN's advice on whether to proceed with the LRO regarding .GCC. ICANN advised WIPO that the LRO should be terminated because the NGPC had removed the .GCC application from further processing based on its acceptance of the GAC consensus advice.

[6] GCCIX submitted its Reconsideration Request challenging the NGPC's acceptance of the GAC consensus advice in 2013. At that time, the BGC, not the BAMC, was responsible for addressing Reconsideration Requests.

Ex. R-26

RESPONDENT'S EXHIBIT

Resources
About ICANN
Board
Accountability
Governance
Governance Documents
Guidelines
Articles of Incorporation
Bylaws
Current Bylaws
Archive
Board Code of Conduct
Board Conflicts of Interest Policy
Board Statements of Interest
Lobbying Disclosures & Contribution Reports
Summary of Conflicts of Interest and Ethics Practices Review
Evolving ICANN's MSM
Agreements
Annual Reports
Financials

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 28 November 2019

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

ARTICLE 2 POWERS

ARTICLE 3 TRANSPARENCY

ARTICLE 4 ACCOUNTABILITY AND REVIEW

ARTICLE 5 OMBUDSMAN

ARTICLE 6 EMPOWERED COMMUNITY

ARTICLE 7 BOARD OF DIRECTORS

ARTICLE 8 NOMINATING COMMITTEE

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

ARTICLE 12 ADVISORY COMMITTEES

ARTICLE 13 OTHER ADVISORY MECHANISMS

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

ARTICLE 15 OFFICERS

ARTICLE 16 POST-TRANSITION IANA ENTITY

ARTICLE 17 CUSTOMER STANDING COMMITTEE

ARTICLE 18 IANA NAMING FUNCTION REVIEWS

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND

- Planning
- Presentations
- RFPs
- Litigation
- Newsletter
- Correspondence
- Quarterly Reports
- Groups
- Business
- Civil Society
- Complaints Office
- Domain Name System Abuse
- Contractual Compliance
- Registrars
- Registry Operators
- Domain Name Registrants
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (OCTO IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy
- Operational Design Phase (ODP)
- Implementation

OTHER AGENTS

ARTICLE 21 GENERAL PROVISIONS

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

ARTICLE 23 MEMBERS

ARTICLE 24 OFFICES AND SEAL

ARTICLE 25 AMENDMENTS

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN'S ASSETS

ARTICLE 27 TRANSITION ARTICLE

ANNEX A: GNSO POLICY DEVELOPMENT PROCESS

ANNEX A-1: GNSO EXPEDITED POLICY DEVELOPMENT PROCESS

ANNEX A-2: GNSO GUIDANCE PROCESS

ANNEX B: CCNSO POLICY-DEVELOPMENT PROCESS

ANNEX C: THE SCOPE OF THE CCNSO

ANNEX D: EC MECHANISM

ANNEX E: CARETAKER ICANN BUDGET PRINCIPLES

ANNEX F: CARETAKER IANA BUDGET PRINCIPLES

ANNEX G-1

ANNEX G-2

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN:

> (i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("**DNS**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

Public Comment

Root Zone KSK Rollover

Technical Functions

ICANN Locations

Help

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF**") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN shall not act outside its Mission.

(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN's authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of

ICANN's authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN's Articles of Incorporation ("**Articles of Incorporation**"):

(A)

> (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on 1 October 2016 [1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;
>
> (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B)any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C)ICANN's Five-Year Strategic Plan and Five-Year Operating Plan existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN.

(iv) ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2. COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, each as described below.

(a) **COMMITMENTS**

In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

> (i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

(ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;

(iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;

(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN:

(i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies;

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN's other obligations under these Bylaws, at a speed that is responsive to the needs

> of the global Internet community;
>
> (vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;
>
> (vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and
>
> (viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.

ARTICLE 2 POWERS

Section 2.1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "of all Directors."

Section 2.2. RESTRICTIONS

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section 2.2 is intended to prevent ICANN from taking whatever

steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 2.3. NON-DISCRIMINATORY TREATMENT

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE 3 TRANSPARENCY

Section 3.1. OPEN AND TRANSPARENT

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "**Website**"), which may include, among other things, (a) a calendar of scheduled meetings of the Board, the EC (as defined in Section 6.1(a)), Supporting Organizations (as defined in Section 11.1), and Advisory Committees (as defined in Section 12.1); (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices and agendas as described below; (d) information on the ICANN Budget (as defined in Section 22.4(a)(i)), the IANA Budget (as defined in Section 22.4(b)(i)), annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN activities of interest to significant segments of the ICANN community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN's physical meetings and public forums; and (i) other information of interest to the ICANN community.

Section 3.3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN, including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 3.4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 3.5. MINUTES AND PRELIMINARY REPORTS

a. All minutes of meetings of the Board, the Advisory Committees and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary ("**Secretary**") for posting on the Website. All proceedings of the EC Administration (as defined in Section 6.3) and the EC shall be provided to the Secretary for posting on the Website.

b. No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the resolutions made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (as set forth in Article 9 through Article 11) and Advisory Committees (as set forth in Article 12) informing them that the resolutions have been posted.

c. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

d. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:

> (i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
>
> (ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN's public comment practices), prior to any action by the Board; and
>
> (iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee ("**GAC**" or "**Governmental Advisory Committee**") and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS, financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.

(d) Where a Board resolution is consistent with GAC Consensus Advice (as defined in Section 12.2(a)(x)), the Board shall make a determination whether the GAC Consensus Advice was a material factor in the Board's adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a "**GAC Consensus Board Resolution**") and shall cite the applicable GAC Consensus Advice. To the extent practical, the Board shall ensure that GAC Consensus Board Resolutions only relate to the matters that were the subject of the applicable GAC Consensus Advice and not matters unrelated to the applicable GAC Consensus Advice. For the avoidance of doubt: (i) a GAC Consensus Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are specifically identified as such by the Board; and (ii) a Board resolution approving an action consistent with GAC Consensus Advice received during a standard engagement process in which input from all Supporting Organizations and Advisory Committees has been requested shall not be considered a GAC Consensus Board Resolution based solely on that input, unless the GAC Consensus Advice was a material factor in the Board's adoption of such resolution.

(e) GAC Carve-out

(i) Where a Board resolution is consistent with GAC Consensus Advice and the Board has determined that the GAC Consensus Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC Consensus Board Resolution, the Governmental Advisory Committee shall not participate as a decision-maker in the EC's exercise of its right to challenge the Board's implementation of such GAC Consensus Advice. In such cases, the Governmental Advisory Committee may participate in the EC in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC ("**GAC Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC Carve-out shall only apply if an IRP Panel has found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC Consensus Board Resolution and the line item or provision that implements such specific GAC Consensus Board Resolution ("**GAC Consensus Statement**"), (B) the Governmental Advisory Committee shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section 1.1 of Annex D), and (C) any EC Decision (as defined in Section 4.1(a) of Annex D) that requires the support of four or more Decisional Participants (as defined in Section 6.1(a)) pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.

(iii) For the avoidance of doubt, the GAC Carve-out shall not apply to the exercise of the EC's rights where a material factor in the Board's decision was advice of the Governmental Advisory Committee that was not GAC Consensus Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN Budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and

other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.

(b) The EC may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC of these Bylaws. The EC Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

> (i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
>
> (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
>
> (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

> (i) Disputes relating to country code top-level domain ("**ccTLD**") delegations and re-delegations;
>
> (ii) Disputes relating to Internet numbering resources; and
>
> (iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board Accountability Mechanisms Committee to review and consider Reconsideration Requests. The Board Accountability Mechanisms Committee shall have the authority to:

> (i) Evaluate Reconsideration Requests;
>
> (ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;
>
> (iii) Evaluate Reconsideration Requests for urgent consideration;
>
> (iv) Conduct whatever factual investigation is deemed appropriate;
>
> (v) Request additional written submissions from the affected party, or from other parties; and
>
> (vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Accountability Mechanisms Committee:

> (i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:
>
> (A)for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;
>
> (B)for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or
>
> (C)for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.
>
> (ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at https://www.icann.org/resources/pages/accountability/reconsideration-en. Requestors

must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board Accountability Mechanisms Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Accountability Mechanisms Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Accountability Mechanisms Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

> (i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.
>
> (ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.
>
> (iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(m) The Board Accountability Mechanisms Committee may ask ICANN Staff for its views on a Reconsideration Request, which comments shall be made publicly

available on the Website.

(n) The Board Accountability Mechanisms Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board Accountability Mechanisms Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation.

(o) The Board Accountability Mechanisms Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation. Any information collected by ICANN from third parties shall be provided to the Requestor.

(p) The Board Accountability Mechanisms Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN Staff, and by any third party.

(q) The Board Accountability Mechanisms Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Accountability Mechanisms Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request. The final recommendation of the Board Accountability Mechanisms Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Accountability Mechanisms Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

(r) The Board shall not be bound to follow the recommendations of the Board Accountability Mechanisms Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Accountability Mechanisms Committee within 45 days of receipt of the Board Accountability Mechanisms Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's

final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Accountability Mechanisms Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board Accountability Mechanisms Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN's redaction.

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN's principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

(t) The Board Accountability Mechanisms Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Accountability Mechanisms Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Accountability Mechanisms Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Accountability Mechanisms Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

(u) The Board Accountability Mechanisms Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

> (i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;
>
> (ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration

Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;

(iii) an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and

(iv) whether or not, in the Board Accountability Mechanisms Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("**IRP**"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

(i) Ensure that ICANN does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.

(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in Section 4.3(b)(i)).

(iii) Ensure that ICANN is accountable to the global Internet community and Claimants.

(iv) Address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract (as defined in Section 16.3(a)).

(v) Provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation.

(vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations, Advisory Committees, and the global Internet community in connection with policy development and implementation.

(vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.

(viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.

> (ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes of the IRP.

(b) The scope of the IRP is defined with reference to the following terms:

> (i) A "**Claimant**" is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.
>
> (A)The EC is deemed to be materially affected by all Covered Actions. ICANN shall not assert any defenses of standing or capacity against the EC in any forum.
>
> (B)ICANN shall not object to the standing of the EC, a Supporting Organization, or an Advisory Committee to participate in an IRP, to compel an IRP, or to enforce an IRP decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel (as defined in Section 4.3(g)) concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.
>
> (ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.
>
> (iii) "**Disputes**" are defined as:

(A)Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

(1) exceeded the scope of the Mission;

(2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws.

(B)Claims that ICANN, the Board, individual Directors, Officers or Staff members have not enforced ICANN's contractual rights with respect to the IANA Naming Function Contract, and

(C)Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

(c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

> (i) EC challenges to the result(s) of a PDP, unless the Supporting Organization(s) that approved the PDP supports the EC bringing such a challenge;
>
> (ii) Claims relating to ccTLD delegations and re-delegations;
>
> (iii) Claims relating to Internet numbering resources, and
>
> (iv) Claims relating to protocol parameters.

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC to commence an IRP ("**Community IRP**"), the EC shall first comply with the procedures set forth in Section 4.2 of Annex D.

(e) Cooperative Engagement Process

> (i) Except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.
>
> (ii) The CEP is voluntary. However, except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN is the prevailing party in the IRP, the IRP Panel shall award to ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.
>
> (iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("**IRP Mediator**") after at least one CEP meeting.
>
> (iv) Unless all parties agree on the selection of a particular IRP Mediator, any

> IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

(f) ICANN hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code ("**CCC**") against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure (as defined in Section 4.3(n)(i)). Following the selection of an IRP Panel, that IRP Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN's written response ("**Response**") in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is timely filed by ICANN, the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.

(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

> (i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.
>
> (ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
>
> (iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.
>
> (iv) With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.
>
> (v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as

defined in the IANA Naming Function Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the "**Standing Panel**") each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN's Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN on the workings and management of the Internet's unique identifiers and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).

(ii) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

(A)ICANN, in consultation with the Supporting Organizations and Advisory Committees, shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the "**IRP Implementation Oversight Team**" (described in Section 4.3(n)(i)) on a draft tender document.

(B)ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C)The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D)Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.

(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.

(iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region (as defined in Section 7.5).

(k) IRP Panel

(i) A three-member IRP Panel shall be selected from the Standing Panel to hear

a specific Dispute.

(ii) The Claimant and ICANN shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider's rules shall apply to selection of the third panelist.

(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members' individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.

(iv) Upon request of an IRP Panel, the IRP Panel shall have access to independent skilled technical experts at the expense of ICANN, although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.

(v) IRP Panel decisions shall be made by a simple majority of the IRP Panel.

(l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.

(m) IRP Provider

(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider ("**IRP Provider**"). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at the direction of the IRP Panel, and shall function independently from ICANN.

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN, and take effect upon approval by the Board, such approval not to be unreasonably withheld.

(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment that complies with the designated practice for public comment periods within ICANN.

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

(B)Issues relating to joinder, intervention, and consolidation of Claims;

(C)Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant's Claim and in support of ICANN's Response;

(D)Availability and limitations on discovery methods;

(E)Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F)Procedures if ICANN elects not to respond to an IRP; and

(G)The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that

> violated the Articles of Incorporation or Bylaws, declare whether ICANN failed to enforce ICANN's contractual rights with respect to the IANA Naming Function Contract or resolve PTI service complaints by direct customers of the IANA naming functions, as applicable;
>
> (iv) Recommend that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;
>
> (v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;
>
> (vi) Determine the timing for each IRP proceeding; and
>
> (vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider's rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

> (i) A harm for which there will be no adequate remedy in the absence of such relief;
>
> (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and
>
> (iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

> (i) Standing Panel members must be independent of ICANN and its Supporting Organizations and Advisory Committees, and so must adhere to the following criteria:
>
> (A)Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.
>
> (B)Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN positions.

> (ii) The IRP Provider shall disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.

(r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

(t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.

(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.

(v) Subject to this Section 4.3, all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.

(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.

(x) The IRP is intended as a final, binding arbitration process.

> (i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over ICANN without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) ICANN intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.

(A)Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B)If an IRP Panel decision in a Community IRP is in favor of the EC, the Board shall comply within 30 days of such IRP Panel decision.

(C)If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.

Section 4.4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.

These periodic reviews shall be conducted no less frequently than every five years,

based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC under the Articles of Incorporation and these Bylaws.

(b) The Governmental Advisory Committee shall provide its own review mechanisms.

Section 4.5. ANNUAL REVIEW

ICANN will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required bySection 4.6 and the status of ICANN's implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

> (i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN. The Operating Standards must be aligned with the following guidelines:
>
> (A)Each Supporting Organization and Advisory Committee participating in the applicable review may nominate up to seven prospective members for the review team;
>
> (B)Any Supporting Organization or Advisory Committee nominating at least one,

two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

(C)If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding ICANN's deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

(1) ICANN must provide a justification for any refusal to reveal requested information. ICANN's refusal can be appealed to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request.

(2) ICANN may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. ICANN's designation of documents may also be appealed to the Ombudsman and/or the ICANN Board.

(3) ICANN may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN's present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC's interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;

(C) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);

(D) assessing the extent to which ICANN's decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security, Stability, and Resiliency Review

(i) The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS, and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS, consistent with ICANN's Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD Round**").

(ii) After a New gTLD Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT Review**").

(iii) The review team for the CCT Review ("**CCT Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD Round.

(iv) For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT Review Team shall also assess the extent to which prior CCT Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work

with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("**OECD**") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

Section 4.7. COMMUNITY MEDIATION

(a) If the Board refuses or fails to comply with a duly authorized and valid EC Decision under these Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC Decision if the Board has not complied with the EC Decision within 30 days of being notified of the relevant EC Decision.

(b) If a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) is delivered to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC Administration shall designate individuals to represent the EC in the mediation ("**Mediation Administration**") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC Administration and the Board can designate themselves as representatives. ICANN shall promptly post the Mediation Initiation Notice on the Website.

(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of at least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new

slate until a mutually-agreed mediator is selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC. The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC.

(e) The mediator shall conduct the mediation in accordance with these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually-agreed between the Mediation Administration and Board Mediation Representatives.

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(g) ICANN shall bear all costs of the mediator.

(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.

(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations ("**Mediation Resolution**" and the date of such resolution, the "**Mediation Resolution Date**"). ICANN shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC Community IRP Initiation Notice (as defined in Section 4.2(e) of Annex D) pursuant to and in compliance with Section 4.2 of Annex D within eighty (80) days following the Mediation Resolution Date.

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board. Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2 , the Ombudsman shall serve the function expressly provided for in Section 4.2 .

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

(a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;

(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;

(c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;

(d) have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;

(f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and

(g) comply with all ICANN conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

(a) No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

(b) ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

Section 5.5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

(a) The Empowered Community ("**EC**") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO (as defined in Section 10.1), the GNSO (as defined in Section 11.1), the ALAC (as defined in Section 12.2(d)(i)) and the GAC (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC, and the terms contained herein and in these Bylaws relating to the EC shall be the EC's "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2 . Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations or Advisory Committees), and any corresponding changes in the voting thresholds for exercise of the EC's rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

(c) The sole purpose of the EC is to exercise its rights and perform its obligations under ICANN's Articles of Incorporation and these Bylaws, and the EC shall have no other powers or rights except as expressly provided therein. The EC may only act as provided in these Bylaws. Any act of the EC that is not in accordance with these Bylaws shall not be effective.

(d) The EC shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)).

(e) Decisional Participants shall not transfer their right to be an associate of the EC. Any attempted transfer by any Decisional Participant of its right to be an associate of the EC shall be void ab initio.

(f) The location and street address of the EC shall be the principal office of ICANN.

(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.

Section 6.2. POWERS AND ACKNOWLEDGMENTS

(a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

> (i) Appoint and remove individual Directors (other than the President);
>
> (ii) Recall the entire Board;
>
> (iii) Reject ICANN Budgets, IANA Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));
>
> (iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));
>
> (v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article 26(a));
>
> (vi) Reject PTI Governance Actions (as defined in Section 16.2(d));,
>
> (vii) Require the ICANN Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));
>
> (viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and
>
> (ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

(b) The EC may pursue an action in any court with jurisdiction over ICANN to enforce the EC's rights under these Bylaws. ICANN acknowledges the EC's legal personhood and shall not raise the EC's legal personhood as a defense in any proceeding between ICANN and the EC. ICANN shall not assert as a defense that prior filing or completion

of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC's power to appoint or remove an individual Director or recall the Board (except to the extent an IRP Panel award is applicable pursuant to Section 3.6(e)).

(c) By nominating a Director for designation by the EC or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC pursuant to these Bylaws, the EC and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby.

Section 6.3. EC ADMINISTRATION

(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the "**EC Administration**"). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC Administration.

(b) In representing a Decisional Participant on the EC Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

(c) In representing the EC Administration, the individuals serving thereon shall act as required for the EC to follow the applicable procedures in Annex D, and to implement EC decisions made in accordance with such procedures.

(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be provided by the Decisional Participant's representative on the EC Administration. All communications and notices required or permitted to be given under these Bylaws by the EC shall be provided by any member of the EC Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC and the Decisional Participants shall provide a copy of the notice to the Secretary in accordance with Section 21.5, and ICANN shall post it on the Website.

(e) ICANN shall be entitled to rely on notices from a Decisional Participant's representative or an individual serving on the EC Administration delivered in accordance with Section 21.5 as evidence that the actions set forth therein have been approved by or are the actions of the Decisional Participant, the EC or the EC Administration, as applicable, pursuant to and in compliance with the requirements of these Bylaws (including Annex D) .

(f) No person participating in the EC, the EC Administration or a Decisional Participant shall be liable for any debt, obligation or liability of ICANN or the EC, other than in the case of a fraudulent act committed by such person.

Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

In the event the EC Administration receives from the Secretary a valid notice as

described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC shall without deliberation consent to such removal, and the EC Administration shall provide notice to the Secretary of such consent.

ARTICLE 7 BOARD OF DIRECTORS

Section 7.1. COMPOSITION OF THE BOARD

The ICANN Board of Directors ("**Board**") shall consist of sixteen voting directors ("**Directors**"). In addition, four non-voting liaisons ("**Liaisons**") shall be appointed for the purposes set forth in Section 7.9. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the Board.

Section 7.2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIR AND VICE-CHAIR

(a) As of the effective date of the amendment and restatement of these Bylaws on 1 October 2016, the EC shall be the sole designator of ICANN and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio. The EC shall notify promptly the Secretary in writing of the following designations:

> (i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seats 1 through 8.
>
> (ii) Two Directors nominated by the ASO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.
>
> (iii) Two Directors nominated by the ccNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.
>
> (iv) Two Directors nominated by the GNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.
>
> (v) One Director nominated by the At-Large Community to be designated as Directors by the EC. This seat on the Board is referred to in these Bylaws as Seat 15.

In addition to the Directors designated by the EC, the President shall serve ex officio as a Director. The seat held by the President on the Board is referred to in these Bylaws as Seat 16.

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC, the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture,

skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(c) In carrying out their responsibilities to nominate Directors for Seats 9 through 15 for designation by the EC, the Supporting Organizations and the At-Large Community shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. The Supporting Organizations shall ensure that, at any given time, no two Directors nominated by a Supporting Organization are citizens from the same country or of countries located in the same Geographic Region. For purposes of this Section 7.2(c), if any candidate for Director maintains citizenship or Domicile of more than one country, that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Supporting Organization or the At-Large Community, as applicable, to use for nomination purposes. For purposes of this Section 7.2(c), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(d) The Board shall annually elect a Chair and a Vice-Chair from among the Directors, not to include the President.

(e) The EC shall designate each person nominated as a Director by the Nominating Committee, the ASO, the ccNSO, the GNSO and the At-Large Community in accordance with this Section 7.2.

(f) As a condition to sitting on the Board, each Director other than the President ex officio shall sign a pre-service letter pursuant to which such Director:

> (i) acknowledges and agrees to the EC's right to remove the Director at any time and for any reason following the processes set forth in these Bylaws;
>
> (ii) acknowledges and agrees that serving as a Director shall not establish any employment or other relationship (whether to ICANN, the EC, any body entitled to nominate a Director, or any of their agents) that provides any due process rights related to termination of service as a Director; and

> (iii) conditionally and irrevocably resigns as a Director automatically effective upon communication to the Director or, in the case of Board recall, communication to the Board of a final determination of removal following the processes set forth in these Bylaws.

Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

(b) Persons with an understanding of ICANN's Mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;

(c) Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section 7.3;

(d) Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

(e) Persons who are able to work and communicate in written and spoken English.

Section 7.4. ADDITIONAL QUALIFICATIONS

(a) Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

(b) No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or Liaison to the Board. If such a person is identified by, or presents themselves to, the Supporting Organization Council or the At-Large Community for consideration for nomination to serve as a Director, the person shall not thereafter participate in any discussion of, or vote by, the Supporting Organization Council or the committee designated by the At-Large Community relating to the nomination of Directors by the Council or At-Large Community, until the Council or committee(s) specified by the At-Large Community has nominated the full complement of Directors it is responsible for nominating. In the event that a person serving in any capacity on a Supporting Organization Council is considered for nomination to serve as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's nomination process. In the event that a person serving in any capacity on the

At-Large Advisory Committee is identified as or accepts a nomination to be considered for nomination by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the At-Large Community's nomination process.

(c) Persons serving in any capacity on the Nominating Committee shall be ineligible for nomination or designation to positions on the Board as provided by Section 8.8.

(d) No person who serves on the EC Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC Administration and as a Director or Liaison to the Board.

Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no Geographic Region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "**Geographic Region**": (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section 7.5 shall be reviewed by the Board from time to time (and in any event at least once every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN. Each Director shall be responsible for disclosing to ICANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the CCC. In addition, each Director shall disclose to ICANN any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CCC. The Board shall adopt policies specifically addressing Director, Officer, EC and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7.7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the EC, the Nominating Committee, Supporting Organization or Advisory Committee that nominated them, as applicable, their employers, or any other organizations or constituencies.

Section 7.8. TERMS OF DIRECTORS

(a) The regular term of office of Director Seats 1 through 15 shall begin as follows:

> (i) The regular terms of Seats 1 through 3 shall begin at the conclusion of each ICANN annual meeting every third year after 2003;
>
> (ii) The regular terms of Seats 4 through 6 shall begin at the conclusion of each ICANN annual meeting every third year after 2004;
>
> (iii) The regular terms of Seats 7 and 8 shall begin at the conclusion of each ICANN annual meeting every third year after 2005;
>
> (iv) The terms of Seats 9 and 12 shall begin at the conclusion of each ICANN annual meeting every third year after 2015;
>
> (v) The terms of Seats 10 and 13 shall begin at the conclusion of each ICANN annual meeting every third year after 2013; and
>
> (vi) The terms of Seats 11, 14 and 15 shall begin at the conclusion of each ICANN annual meeting every third year after 2014.

(b) Each Director holding any of Seats 1 through 15, including a Director nominated and designated to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been designated and qualified or until that Director resigns or is removed in accordance with these Bylaws. For the avoidance of doubt, the new governance provisions effective as of the amendment and restatement of these Bylaws on 1 October 2016 shall not have the effect of shortening or terminating the terms of any Directors serving at the time of the amendment and restatement.

(c) At least two months before the commencement of each annual meeting, the Nominating Committee shall give the EC Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(d) At least six months before the date specified for the commencement of the term as specified in Section 7.8(a)(iv) through Section 7.8(a)(vi) above, any Supporting Organization or the At-Large Community entitled to nominate a Director for a Seat with a term beginning that year shall give the EC Administration (with a copy to the Secretary and the Decisional Participants) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

(f) The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

> (i) One appointed by the Governmental Advisory Committee;
>
> (ii) One appointed by the Root Server System Advisory Committee established by Section 12.2(c);
>
> (iii) One appointed by the Security and Stability Advisory Committee established by Section 12.2(b); and
>
> (iv) One appointed by the Internet Engineering Task Force.

(b) The Liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a Liaison shall give the Secretary written notice of its appointment.

(c) Each Liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the Liaison resigns or is removed in accordance with these Bylaws.

(d) The Liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section 7.9(d) for the purpose of consulting with their respective committee or organization.

Section 7.10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

(a) Directors

> (i) Any Director designated by the EC may be removed without cause:
>
> (A) by the EC pursuant to and in compliance with procedures in Section 3.1 or Section 3.2 of Annex D, as applicable, or
>
> (B) following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that (x) each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director; and (y) such removal shall not be effective until the Secretary has provided notice to the EC Administration of the Board's removal vote and the requirements of Section 6.4 have been met.
>
> (ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of such removal, the Secretary shall promptly notify the EC Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with Section 7.12(a).
>
> (iii) All Directors (other than the President) may be removed at the same time by the EC by the EC Administration delivering an EC Board Recall Notice to the Secretary pursuant to and in compliance with Section 3.3 of Annex D. The vacancies created by such removal shall be filled by the EC in accordance with Section 7.12(b).

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee, any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The vacancies created by such removal shall be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee to consider the replacement of the Governmental Advisory Committee Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 7.12. VACANCIES

(a) This Section 7.12(a) shall apply to Board vacancies other than those occurring by recall of all Directors (other than the President). A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Director or Interim Director (as defined in Section 7.12(b)), or if the authorized number of Directors is increased. Vacancies occurring in Seats 1 through 15 shall be filled by the EC after nomination as provided in Section 7.2 and Articles 8 through 12. A vacancy in Seat 16 shall be filled as provided in Article 15. A Director designated by the EC to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been designated and qualified. No

reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a)(iii). Concurrently with delivery of any EC Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC Administration shall provide written notice of the EC's designation of individuals to fill such vacancies (each such individual, an **"Interim Director**") to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website. An Interim Director must meet the criteria specified in Section 7.3, Section 7.4 and Section 7.5, as applicable. An Interim Director shall hold office until the EC designates the Interim Director's successor in accordance with Section 7.12(a), and the successor's designation shall occur within 120 days of the Interim Director's designation. For avoidance of doubt, persons designated as Interim Directors may be eligible for designation as Directors as well.

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

Section 7.13. ANNUAL MEETINGS

Annual meetings of ICANN shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting of ICANN shall be held at the principal office of ICANN, or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 7.14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

Section 7.15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chair of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN unless otherwise specified in the notice of the meeting.

Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United

States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 7.17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 7.18. ACTIONS BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone.

Section 7.19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 7.20. ELECTRONIC MAIL

If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 7.21. BOARD RIGHTS OF INSPECTION

(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN.

(b) ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 7.22. COMPENSATION

(a) Except for the President of ICANN, who serves ex officio as a Director, each of the Directors shall be entitled to receive compensation for his or her services as a Director. The President shall receive only his or her compensation for service as President and shall not receive additional compensation for service as a Director.

(b) If the Board determines to offer a compensation arrangement to one or more Directors (other than the President) for services to ICANN as Directors, the Board shall follow the process that is calculated to pay an amount for service as a Director that is not an excess benefit under the standards set forth in Section 4958 of the Internal Revenue Code of 1986, as amended (the "**Code**").

(c) As part of the process, the Board shall retain an Independent Valuation Expert (as defined in Section 7.22(g)(i)) to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion (as defined in Section 7.22(g)(ii)) from such expert regarding the ranges of Reasonable Compensation (as defined in Section 7.22(g)(iii)) for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Board Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

(d) After having reviewed the Independent Valuation Expert's Reasoned Written Opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

(e) The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

(f) In addition to authorizing payment of compensation for services as Directors as set forth in this Section 7.22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by Liaisons

performing their duties as Directors or Liaisons.

(g) As used in this Section 7.22, the following terms shall have the following meanings:

> (i) An "**Independent Valuation Expert**" means a person retained by ICANN to value compensation arrangements that: (A) holds itself out to the public as a compensation consultant; (B) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN; (C) is qualified to make valuations of the type of services involved in any engagement by and for ICANN; (D) issues to ICANN a Reasoned Written Opinion regarding a particular compensation arrangement; and (E) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (A) through (D) of this definition.
>
> (ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.
>
> (iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental Advisory Committee Liaison, shall be entitled to receive compensation for his or her services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 7.23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

Section 7.24 INTERIM BOARD

Except in circumstances in which urgent decisions are needed to protect the security, stability or resilience of the DNS or to the extent necessary to comply with its fiduciary obligations under applicable law, a Board that consists of a majority or more of Interim Directors (an "**Interim Board**") shall (a) consult with the chairs of the Supporting Organizations and Advisory Committees before making major decisions and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section 2.3 of Annex D) prior to taking any action that would, if implemented, materially change ICANN's strategy, policies or management, including replacement of the then-serving President. Interim Directors shall be entitled to compensation as provided in this Article 7.

Section 7.25 COMMUNICATION OF DESIGNATION

Upon its receipt of nominations as provided in Articles 7 through 12, the EC Administration, on behalf of the EC, shall promptly notify the Secretary of the EC's designation of individuals to fill seats on the Board. ICANN shall post all such designations promptly to the Website.

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

(a) A non-voting Chair, appointed by the Board;

(b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;

(c) A non-voting liaison appointed by the Root Server System Advisory Committee established by Section 12.2(c);

(d) A non-voting liaison appointed by the Security and Stability Advisory Committee established by Section 12.2(b);

(e) A non-voting liaison appointed by the Governmental Advisory Committee;

(f) Five voting delegates selected by the At-Large Advisory Committee established by

Section 12.2(d);

(g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization established by Article 11, as follows:

> (i) One delegate from the Registries Stakeholder Group;
>
> (ii) One delegate from the Registrars Stakeholder Group;
>
> (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;
>
> (iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));
>
> (v) One delegate from the Intellectual Property Constituency; and
>
> (vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

(h) One voting delegate each selected by the following entities:

> (i) The Council of the Country Code Names Supporting Organization established by Section 10.3;
>
> (ii) The Council of the Address Supporting Organization established by Section 9.2; and
>
> (iii) The Internet Engineering Task Force.

(i) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 8.3. TERMS

(a) Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.

(c) Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.

(d) It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

(e) Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(j).

(f) The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

(b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;

(c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

(d) Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;

(e) Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

(f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing

membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

Section 9.1. DESCRIPTION

(a) The Address Supporting Organization ("**Address Supporting Organization**" or "**ASO**") shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

(b) The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization ("**NRO**"), an organization of the existing RIRs.

Section 9.2. ADDRESS COUNCIL

(a) The ASO shall have an Address Council, consisting of the members of the NRO Number Council.

(b) The Address Council shall nominate individuals to fill Seats 9 and 10 on the Board. Notification of the Address Council's nominations shall be given by the Address Council in writing to the EC Administration, with a copy to the Secretary, and the EC

shall promptly act on it as provided in Section 7.25.

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 10.1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization ("**ccNSO**"), which shall be responsible for:

(a) developing and recommending to the Board global policies relating to country-code top-level domains;

(b) Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs;

(c) Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN;

(d) Nominating individuals to fill Seats 11 and 12 on the Board; and

(e) Other responsibilities of the ccNSO as set forth in these Bylaws.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to Section 10.4(j) and Section 10.4(k). However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

Section 10.2. ORGANIZATION

The ccNSO shall consist of (a) ccTLD managers that have agreed in writing to be members of the ccNSO (see Section 10.4(b)) and (b) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

Section 10.3. ccNSO COUNCIL

(a) The ccNSO Council shall consist of three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in Section 10.4(g) through Section 10.4(i); (ii) three ccNSO Council members selected by the ICANN Nominating Committee; (iii) liaisons as described in Section 10.3(b); and (iv) observers as described in Section 10.3(c).

(b) There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (i) the Governmental Advisory Committee; (ii) the At-Large Advisory Committee; and (iii) each of the Regional Organizations described in Section 10.5. These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of

liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

(c) The ccNSO Council may agree with the Council of any other ICANN Supporting Organization to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO Council at any time by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

(d) (i) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (ii) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (iii) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

(e) A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

(f) ccNSO Council members may be removed for not attending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO Council.

(g) A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in Section 10.4(g) through (i).

(h) The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in Section 10.4(f)) and to manage the development of policy recommendations in accordance with Section 10.6(a). The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

(i) The ccNSO Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's nominations shall be given by the ccNSO Council Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(j) The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

(k) The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.

(l) Except as provided by Section 10.3(i) and Section 10.3(j), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in Section 10.3(n). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

(m) Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO Council shall be provided to each ccNSO Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

(n) Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (i) all ccNSO Council members participating in the meeting can speak to and hear one another, (ii) all ccNSO Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (iii)there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of

the ccNSO Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council, unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of its meetings to the ICANN Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Section 10.4. MEMBERSHIP

(a) The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO. For purposes of this Article 10, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain, or under any later variant, for that country-code top-level domain.

(b) Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. The application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (i) to adhere to rules of the ccNSO, including membership rules, (ii) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (A)adhere to rules of the ccNSO, including membership rules, (B) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.

(e) Each ccTLD manager may designate in writing a person, organization, or entity to

represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.

(f) There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

(g) The ccNSO Council members selected by the ccNSO members from each Geographic Region (see Section 10.3(a)(i)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.

(h) Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO to the Board, and (iv) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

(k) A ccNSO member shall not be bound if it provides a declaration to the ccNSO

Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (A) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Section 10.5. REGIONAL ORGANIZATIONS

The ccNSO Council may designate a Regional Organization for each ICANN Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.

Section 10.6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

(a) The scope of the ccNSO's policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

(b) In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process ("**ccPDP**"). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 10.7. STAFF SUPPORT AND FUNDING

(a) Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.

(b) Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.

(c) The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in Section 10.7(a) and Section 10.7(b), as approved by the ccNSO members.

(d) Written notices given to the Secretary under this Article 10 shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

Section 11.1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (the "**Generic Names Supporting Organization**" or "**GNSO**", and collectively with the ASO and ccNSO, the "**Supporting Organizations**")), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws.

Section 11.2. ORGANIZATION

The GNSO shall consist of:

(a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;

(b) Four Stakeholder Groups organized within Houses as described in Section 11.5;

(c) Two Houses within the GNSO Council as described in Section 11.3(h);

(d) A GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 11.3; and

(e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

Section 11.3. GNSO COUNCIL

(a) Subject to Section 11.5, the GNSO Council shall consist of:

> (i) three representatives selected from the Registries Stakeholder Group;

> (ii) three representatives selected from the Registrars Stakeholder Group;
>
> (iii) six representatives selected from the Commercial Stakeholder Group;
>
> (iv) six representatives selected from the Non-Commercial Stakeholder Group; and
>
> (v) three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO Council is as diverse as possible and practicable, including considerations of geography, GNSO Constituency, sector, ability and gender.

There may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and/or Advisory Committees, from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

(b) The regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council

member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

(c) A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause: (i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or (ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 11.3(h)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

(d) The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "**GNSO Operating Procedures**") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in Section 11.6.

(e) No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.

(f) The GNSO shall nominate by written ballot or by action at a meeting individuals to fill Seats 13 and 14 on the Board. Each of the two voting Houses of the GNSO, as described in Section 11.3(h), shall make a nomination to fill one of two Board seats, as outlined below; any such nomination must have affirmative votes compromising sixty percent (60%) of all the respective voting House members:

> (i) the Contracted Parties House (as described in Section 11.3(h)(i)) shall select a representative to fill Seat 13; and
>
> (ii) the Non-Contracted Parties House (as described in Section 11.3(h)(ii)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(g) The GNSO Council shall select the GNSO Chair for a term the GNSO Council

specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

> (i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and
>
> (ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

> (i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
>
> (ii) Initiate a Policy Development Process ("**PDP**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
>
> (iii) Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority (as defined in Section 11.3(i)(xix)).
>
> (iv) Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
>
> (v) Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.
>
> (vi) Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under (iv) or (v) above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.

(vii) Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.

(viii) Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

(ix) Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,

(x) Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xi) Modification of Approved PDP Recommendation: Prior to Final Approval by the Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.

(xii) Initiation of an Expedited Policy Development Process ("**EPDP**"): requires an affirmative vote of a GNSO Supermajority.

(xiii) Approve an EPDP Team Charter: requires an affirmative vote of a GNSO Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO Guidance Process ("**GGP**"): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xix) A "**GNSO Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

(j) The voting thresholds described below shall apply to the following GNSO actions as

a Decisional Participant in the Empowered Community. For any action not listed, the default threshold for the GNSO to act as a Decisional Participant in the Empowered community requires a simple majority vote of each House:

> (i) Amendment of PTI Articles of Incorporation as contemplated in Section 16.2: requires an affirmative vote of a GNSO Supermajority.
>
> (ii) GNSO Council Inspection Request as contemplated in Section 22.7: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
>
> (iii) GNSO Council Inspection Remedy, as contemplated in Section 22.7 - e, and Stakeholder Group / Constituency Inspection Remedy, as contemplated in Section 22.7 – e(ii) and e(iii), for an inspection requested by the GNSO as a Decisional Participant in the Empowered Community: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
>
> (iv) Amendments to Fundamental Bylaws and Article Amendments as contemplated by Section 25.2 of the Bylaws, Asset Sales, as contemplated by Article 26 of the Bylaws, amendments to ICANN Articles of Incorporation: requires an affirmative vote of a GNSO Supermajority.
>
> (v) Approval of a Nominating Committee Director Removal Petition as contemplated in Annex D, Article 3, Section 3.1(b) and support for a petition submitted by a Petitioning Decisional Participant as contemplated in Section 3.2(d): requires an affirmative vote of a GNSO Supermajority.
>
> (vi) Approval of a Nominating Committee Director Removal Supported Petition as contemplated in Annex D, Article 3, Section 3.1(f): requires an affirmative vote of a GNSO Supermajority.
>
> (vii) Approval of a petition to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(a): requires an affirmative vote of at least three-fourths (3/4) of the House that appointed that Director.
>
> (viii) Approval of a petition notice to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(f): requires an affirmative vote of at least three-fourths (3/4) of the GNSO Council and at least three-fourths (3/4) of the House that appointed that Director.
>
> (ix) Approval of a Board Recall Petition as contemplated in Annex D, Article 3, Section 3.3(b) and support for another Petitioning Decisional Participant: requires an affirmative vote of a GNSO Supermajority.
>
> (x) Approval of a Board Recall Supported Petition as contemplated in Annex D, Article 3, Section 3.3(e): requires an affirmative vote of a GNSO Supermajority.

Section 11.4. STAFF SUPPORT AND FUNDING

(a) A member of the ICANN staff shall be assigned to support the GNSO, whose work

on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager ("**Staff Manager**").

(b) ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 11.5. STAKEHOLDER GROUPS

(a) The following "**Stakeholder Groups**" are hereby recognized as representative of a specific group of one or more "**Constituencies**" or interest groups:

> (i) Registries Stakeholder Group representing all gTLD registries under contract to ICANN;
>
> (ii) Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;
>
> (iii) Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet ("**Commercial Stakeholder Group**"), which includes the Business Constituency ("**Business Constituency**"), Intellectual Property Constituency ("**Intellectual Property Constituency**") and the Internet Service Providers and Connectivity Providers Constituency ("**Internet Service Providers and Connectivity Providers Constituency**"); and
>
> (iv) Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

(b) Each Stakeholder Group is assigned a specific number of GNSO Council seats in accordance with Section 11.3(a).

(c) Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

(d) Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

> (i) A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities;

> (ii) A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;
>
> (iii) A recommendation for organizational placement within a particular Stakeholder Group; and
>
> (iv) A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

(e) The Board may create new Constituencies as described in Section 11.5(c) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 11.6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 11.3(d).

ARTICLE 12 ADVISORY COMMITTEES

Section 12.1. GENERAL

The Board may create one or more "**Advisory Committees**" in addition to those set forth in this Article 12. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

(a) Governmental Advisory Committee

> (i) The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

(ii) Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.

(iii) The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.

(iv) The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.

(v) Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Governmental Advisory Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

(vi) The Governmental Advisory Committee shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

(vii) The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees, to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.

(viii) The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of the Supporting Organizations or Advisory Committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

(ix) The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC Consensus Advice**"), may only be rejected by a vote of

no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

(xi) If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

(b) Security and Stability Advisory Committee

(i) The role of the Security and Stability Advisory Committee ("**Security and Stability Advisory Committee**" or "**SSAC**") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

(A) To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The SSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The SSAC shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN community and Board.

(ii) The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1

January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. The Board shall also have the power to remove SSAC appointees as recommended by or in consultation with the SSAC.

(iii) The SSAC shall annually appoint a Liaison to the Board according to Section 7.9.

(c) Root Server System Advisory Committee

(i) The role of the Root Server System Advisory Committee ("**Root Server System Advisory Committee**" or "**RSSAC**") is to advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

(A) Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The RSSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.

(B) Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.

(C) Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN community and Board.

(ii) The RSSAC shall be led by a chair. The RSSAC chair and members shall be appointed by the Board.

(A) RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chair shall provide recommendations to the Board regarding appointments to the RSSAC. If the Board declines to appoint a person nominated by the RSSAC, then it will provide the rationale for its decision. The RSSAC chair shall stagger

appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The Board shall also have the power to remove RSSAC appointees as recommended by or in consultation with the RSSAC.

(B) The RSSAC shall recommend the appointment of the chair to the Board following a nomination process that it devises and documents.

(iii) The RSSAC shall annually appoint a Liaison to the Board according to Section 7.9jm.

(d) At-Large Advisory Committee

(i) The At-Large Advisory Committee ("**At-Large Advisory Committee**" or "**ALAC**") is the primary organizational home within ICANN for individual Internet users. The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in ICANN's accountability mechanisms, also coordinates some of ICANN's outreach to individual Internet users.

(ii) The ALAC shall consist of (A) two members selected by each of the Regional At-Large Organizations ("**RALOs**") established according to Section 12.2(d)(vii), and (B) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 7.5.

(iii) The regular terms of members of the ALAC shall be as follows:

(A) The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.

(B) The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.

(C) The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

(D) The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.

(iv) The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the ALAC.

(v) The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same

Geographic Region) to the Nominating Committee.

(vi) The At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

(vii) There shall be one RALO for each Geographic Region established according to Section 7.5. Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures ("**At-Large Structures**").

(viii) Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to Section 12.2(d)(ix). If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

(ix) Membership in the At-Large Community

(A) The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.

(B) The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

(C) Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.

(D) To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.

(E) Once the criteria and standards have been established as provided in this Section 12.2(d)(ix), the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as

meeting the criteria and standards for At-Large Structure accreditation.

(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its rules of procedure, save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.

(G) Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

(H) On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

(x) The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

(A) Nominating individuals to fill Seat 15 on the Board. Notification of the At-Large Community's nomination shall be given by the ALAC Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(B) Keeping the community of individual Internet users informed about the significant news from ICANN;

(C) Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;

(D) Promoting outreach activities in the community of individual Internet users;

(E) Developing and maintaining on-going information and education programs, regarding ICANN and its work;

(F) Establishing an outreach strategy about ICANN issues in each RALO's Geographic Region;

(G) Participating in the ICANN policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

(H) Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

(I) Offering Internet-based mechanisms that enable discussions among members of At-Large Structures; and

(xi) Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

Section 12.3. PROCEDURES

Each Advisory Committee shall determine its own rules of procedure and quorum requirements; provided that each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice. The Board will respond in a timely manner to formal advice from all Advisory Committees explaining what action it took and the rationale for doing so.

Section 12.4. TERM OF OFFICE

The chair and each member of an Advisory Committee shall serve until his or her successor is appointed, or until such Advisory Committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the Advisory Committee.

Section 12.5. VACANCIES

Vacancies on any Advisory Committee shall be filled in the same manner as provided in the case of original appointments.

Section 12.6. COMPENSATION

Advisory Committee members shall receive no compensation for their services as a member of such Advisory Committee. The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by Advisory Committee members, including Directors, performing their duties as Advisory Committee members.

ARTICLE 13 OTHER ADVISORY MECHANISMS

Section 13.1. EXTERNAL EXPERT ADVICE

(a) Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN. In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

(b) Types of Expert Advisory Panels

> (i) On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 13.1(c) shall apply.
>
> (ii) In addition, in accordance with Section 13.1(c), the Board may refer issues of public policy pertinent to matters within ICANN's Mission to a multinational governmental or treaty organization.

(c) Process for Seeking Advice: Public Policy Matters

> (i) The Governmental Advisory Committee may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.
>
> (ii) In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.
>
> (iii) The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee, with the suggestion that the request be transmitted by the Governmental Advisory Committee to the multinational governmental or treaty organization.

(d) Process for Seeking and Advice: Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 13.1(b)(i) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

(e) Receipt of Expert Advice and its Effect. External advice pursuant to this Section 13.1 shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.

(f) Opportunity to Comment. The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 13.2. TECHNICAL LIAISON GROUP

(a) Purpose. The quality of ICANN's work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN's activities. ICANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group ("**TLG**") shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN's activities.

(b) TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board ("**IAB**").

(c) Role. The role of the TLG organizations shall be to channel technical information

and guidance to the Board and to other ICANN entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

> (i) In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.
>
> (ii) As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN's Mission. This component of the TLG role covers circumstances in which ICANN is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

(d) TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

(e) Technical Work with the IETF. The TLG shall have no involvement with ICANN's work for the Internet Engineering Task Force (IETF), Internet Research Task Force, or the Internet Architecture Board (IAB), as described in the IETF-ICANN Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000 and any supplemental agreements thereto.

(f) Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN's activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN when ICANN does not ask a specific TLG organization directly.

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

Section 14.1. BOARD COMMITTEES

The Board may establish one or more committees of the Board (each, a "**Board Committee**"), which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; provided, that a Liaison may be appointed as a liaison to a Committee of the Board consistent with their non-voting capacity. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board.

Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all Directors; provided, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all Directors.

Section 14.2. POWERS OF BOARD COMMITTEES

(a) The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

> (i) The filling of vacancies on the Board or on any committee;
>
> (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
>
> (iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
>
> (iv) The appointment of committees of the Board or the members thereof;
>
> (v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CCC;
>
> (vi) The approval of the ICANN Budget or IANA Budget required by Section 22.4 or the Operating Plan or Strategic Plan required by Section 22.5; or
>
> (vii) The compensation of any Officer described in Article 15.

(b) The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings of committees shall be governed by the provisions of Article 7 applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 14.3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE 15 OFFICERS

Section 15.1. OFFICERS

The officers of ICANN (each, an "**Officer**") shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN.

Section 15.2. ELECTION OF OFFICERS

The officers of ICANN shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chair of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 15.3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all Directors. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 15.4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio Director, and shall have all the same rights and privileges of any Director. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 15.5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 15.6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("**CFO**") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial

condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of the ICANN Budget, the IANA Budget and Operating Plan. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

Section 15.7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 15.8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 15.9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN.

ARTICLE 16 POST-TRANSITION IANA ENTITY

Section 16.1. DESCRIPTION

ICANN shall maintain as a separate legal entity a California nonprofit public benefit corporation (["**PTI**"]) for the purpose of providing IANA services, including providing IANA naming function services pursuant to the IANA Naming Function Contract, as well as other services as determined by ICANN in coordination with the direct and indirect customers of the IANA functions. ICANN shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("**Member**"). For the purposes of these Bylaws, the "IANA naming function" does not include the Internet Protocol numbers and Autonomous System numbers services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services and the root zone maintainer function.

Section 16.2. PTI Governance

(a) ICANN, in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and have all other powers of a sole Member under the CCC except as otherwise provided in these Bylaws.

(b) No amendment or modification of the articles of incorporation of PTI shall be

effective unless approved by the EC (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI's articles of incorporation).

(c) ICANN shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a "**PTI Bylaw Amendment**") if such PTI Bylaw Amendment has been rejected by the EC pursuant to the procedures described in Section 16.2(e):

> (i) any change to the corporate form of PTI to an entity that is not a California nonprofit public benefit corporation organized under the CCC or any successor statute;
>
> (ii) any change in the corporate mission of PTI that is materially inconsistent with ICANN's Mission as set forth in these Bylaws;
>
> (iii) any change to the status of PTI as a corporation with members;
>
> (iv) any change in the rights of ICANN as the sole Member of PTI, including voting, classes of membership, rights, privileges, preferences, restrictions and conditions;
>
> (v) any change that would grant rights to any person or entity (other than ICANN) with respect to PTI as designators or otherwise to: (A) elect or designate directors of PTI; or (B) approve any amendments to the articles of incorporation or bylaws of PTI;
>
> (vi) any change in the number of directors of the board of directors of PTI (the "**PTI Board**");
>
> (vii) any changes in the allocation of directors on the PTI Board between independent directors and employees of ICANN or employees of PTI or to the definition of "independent" (as used in PTI's bylaws) for purposes of determining whether a director of PTI is independent;
>
> (viii) the creation of any committee of the PTI Board with the power to exercise the authority of the PTI Board;
>
> (ix) any change in the procedures for nominating independent PTI directors;
>
> (x) the creation of classes of PTI directors or PTI directors with different terms or voting rights;
>
> (xi) any change in PTI Board quorum requirements or voting requirements;
>
> (xii) any change to the powers and responsibilities of the PTI Board or the PTI officers;
>
> (xiii) any change to the rights to exculpation and indemnification that is adverse to the exculpated or indemnified party, including with respect to advancement of expenses and insurance, provided to directors, officers, employees or other

> agents of PTI; or
>
> (xiv) any change to the requirements to amend the articles of incorporation or bylaws of PTI.

(d) ICANN shall not take any of the following actions (together with the PTI Bylaw Amendments, "**PTI Governance Actions**") if such PTI Governance Action has been rejected by the EC pursuant to the procedures described in Section 16.2(e).

> (i) Any resignation by ICANN as sole Member of PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN of its membership in PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN of any right arising from its membership in PTI.
>
> (ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA Naming Function Separation Process (as defined in Section 19.1(a)) that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.
>
> (iii) Any merger, consolidation, sale or reorganization of PTI.
>
> (iv) Any dissolution, liquidation or winding-up of the business and affairs of PTI or the commencement of any other voluntary bankruptcy proceeding of PTI.

(e) Promptly after the Board approves a PTI Governance Action (a "**PTI Governance Action Approval**"), the Secretary shall provide a notice of the Board's decision to the EC Administration and the Decisional Participants ("**Board Notice**"), which Board Notice shall enclose a copy of the PTI Governance Action that is the subject of the PTI Governance Action Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

> (i) A PTI Governance Action shall become effective upon the earliest to occur of the following:
>
> (A)(1) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant (as defined in Section 2.2(c)(i) of Annex D) to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice (as defined in Section 2.2(c)(ii) of Annex D) is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(b) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance

Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(ii) A PTI Governance Action that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(iii) Following receipt of an EC Rejection Notice relating to a PTI Governance Action, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the PTI Governance Action in determining whether or not to develop a new PTI Governance Action and the substance of such new PTI Governance Action, which shall be subject to the procedures of this Section 16.2.

Section 16.3. IANA NAMING FUNCTION CONTRACT

(a) On or prior to 1 October 2016, ICANN shall enter into a contract with PTI for the performance of the IANA naming function (as it may be amended or modified, the "**IANA Naming Function Contract**") and a related statement of work (the "**IANA Naming Function SOW**"). Except as to implement any modification, waiver or amendment to the IANA Naming Function Contract or IANA Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to Section 18.6 or an SCWG Recommendation approved pursuant to Section 19.4 (which, for the avoidance of doubt, shall not be subject to this Section 16.3(a)), ICANN shall not agree to modify, amend or waive any Material Terms (as defined

below) of the IANA Naming Function Contract or the IANA Naming Function SOW if a majority of each of the ccNSO and GNSO Councils reject the proposed modification, amendment or waiver. The following are the "**Material Terms**" of the IANA Naming Function Contract and IANA Naming Function SOW:

> (i) The parties to the IANA Naming Function Contract and IANA Naming Function SOW;
>
> (ii) The initial term and renewal provisions of the IANA Naming Function Contract and IANA Naming Function SOW;
>
> (iii) The manner in which the IANA Naming Function Contract or IANA Naming Function SOW may be terminated;
>
> (iv) The mechanisms that are available to enforce the IANA Naming Function Contract or IANA Naming Function SOW;
>
> (v) The role and responsibilities of the CSC (as defined in Section 17.1), escalation mechanisms and/or the IFR (as defined in Section 18.1);
>
> (vi) The IANA Naming Function Contract's provisions requiring that fees charged by PTI be based on direct costs and resources incurred by PTI;
>
> (vii) The IANA Naming Function Contract's prohibition against subcontracting;
>
> (viii)The availability of the IRP as a point of escalation for claims of PTI's failure to meet defined service level expectations;
>
> (ix) The IANA Naming Function Contract's audit requirements; and
>
> (x) The requirements related to ICANN funding of PTI.

(b) ICANN shall enforce its rights under the IANA Naming Function Contract and the IANA Naming Function SOW.

ARTICLE 17 CUSTOMER STANDING COMMITTEE

Section 17.1. DESCRIPTION

ICANN shall establish a Customer Standing Committee ("**CSC**") to monitor PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW.

The mission of the CSC is to ensure continued satisfactory performance of the IANA naming function for the direct customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.

The CSC will achieve this mission through regular monitoring of the performance of the IANA naming function against the IANA Naming Function Contract and IANA Naming Function SOW and through mechanisms to engage with PTI to remedy

identified areas of concern.

The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO and GNSO, which might then decide to take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO and GNSO may address matters escalated by the CSC, pursuant to their operating rules and procedures.

Section 17.2. COMPOSITION, APPOINTMENT, TERM AND REMOVAL

(a) The CSC shall consist of:

> (i) Two individuals representing gTLD registry operators appointed by the Registries Stakeholder Group;
>
> (ii) Two individuals representing ccTLD registry operators appointed by the ccNSO; and
>
> (iii) One individual liaison appointed by PTI,
>
> each appointed in accordance with the rules and procedures of the appointing organization; provided that such individuals should have direct experience and knowledge of the IANA naming function.

(b) If so determined by the ccNSO and GNSO, the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD or gTLD, who shall be appointed by the ccNSO and the GNSO. Such representative shall be required to submit a letter of support from the registry operator it represents.

(c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC, (iii) either the NRO or ASO (as determined by the ASO), (iv) GAC, (v) RSSAC, (vi) SSAC and (vii) any other Supporting Organization or Advisory Committee established under these Bylaws.

(d) The GNSO and ccNSO shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO and GNSO shall approve each annual slate of members and liaisons being recommended for a new term.

(e) The CSC members and liaisons shall select from among the CSC members who will serve as the CSC's liaison to the IFRT (as defined in Section 18.1) and any Separation Cross-Community Working Group ("**SCWG**").

(f) Any CSC member or liaison may be removed and replaced at any time and for any reason or no reason by the organization that appointed such member or liaison.

(g) In addition, the Chair of the CSC may recommend that a CSC member or liaison be removed by the organization that appointed such member or liaison, upon any of the following: (i) (A) for not attending without sufficient cause a minimum of nine CSC meetings in a one-year period (or at least 75% of all CSC meetings in a one-year period if less than nine meetings were held in such one-year period) or (B) if such member or liaison has been absent for more than two consecutive meetings without sufficient cause; or (ii) for grossly inappropriate behavior.

(h) A vacancy on the CSC shall be deemed to exist in the event of the death, resignation or removal of any CSC member or liaison. Vacancies shall be filled by the organization(s) that appointed such CSC member or liaison. The appointing organization(s) shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the Chair of the CSC. The organization(s) responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 17.3.CSC CHARTER; PERIODIC REVIEW

(a) The CSC shall act in accordance with its charter (the "**CSC Charter**").

(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review will be determined by the ccNSO and GNSO and the findings of the review will be published on the Website.

(c) The CSC Charter shall be reviewed by a committee of representatives from the ccNSO and the Registries Stakeholder Group selected by such organizations. This review shall commence one year after the first meeting of the CSC. Thereafter, the CSC Charter shall be reviewed by such committee of representatives from the ccNSO and the Registries Stakeholder Group selected by such organizations at the request of the CSC, ccNSO, GNSO, the Board and/or the PTI Board and/or by an IFRT in connection with an IFR.

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO and GNSO Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO and GNSO, any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN. Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Section 17.4. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the CSC to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the CSC.

ARTICLE 18 IANA NAMING FUNCTION REVIEWS

Section 18.1. IANA NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "**IFR**") of PTI's performance of the IANA naming function against the contractual requirements set forth in the IANA Naming Function Contract and the IANA Naming Function SOW to be carried out by an IANA Function Review Team ("**IFRT**") established in accordance with Article 18, as follows:

(a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and

(b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

(a) The first Periodic IFR shall be convened no later than [1 October 2018].

(b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.

(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

(a) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN community, and determine whether to make any recommendations with respect to PTI's performance;

(b) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract and IANA Naming Function SOW;

(c) Review the IANA Naming Function SOW and determine whether to recommend any amendments to the IANA Naming Function Contract and IANA Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;

(d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;

(e) Review and evaluate the performance and effectiveness of the EC with respect to actions taken by the EC, if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;

(f) Review and evaluate the performance of the IANA naming function according to established service level expectations during the IFR period being reviewed and compared to the immediately preceding Periodic IFR period;

(g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;

(h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN);

(i) Consider input from the CSC and the community on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;

(j) Identify process or other areas for improvement in the performance of the IANA naming function under the IANA Naming Function Contract and IANA Naming Function SOW and the performance of the CSC and the EC as it relates to oversight of PTI; and

(k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA Naming Function Contract and IANA Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

(a) Reports provided by PTI pursuant to the IANA Naming Function Contract and/or IANA Naming Function SOW during the IFR period being reviewed, any portion of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with Section 4.6(a)(vi);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN meetings, responses to public surveys related to PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in

consultation with ICANN (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA Naming Function Contract or the IANA Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.3 and comply with this Section 18.5.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO.

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA Naming Function Contract or the IANA Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN.

Section 18.6. RECOMMENDATIONS TO AMEND THE IANA NAMING FUNCTION CONTRACT, IANA NAMING FUNCTION SOW OR CSC

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA Naming Function Contract, IANA Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA Naming Function Contract, IANA Naming Function SOW or CSC Charter is proposed:

> (i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;

(ii) Consult with the CSC;

(iii) Conduct a public input session for ccTLD and gTLD registry operators; and

(iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN.

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA Naming Function Contract or IANA Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs:

(i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the IFR Recommendation; and

(iii) The EC has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(d).

(c) If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.6(b)(i) or (y) does not resolve to either accept or reject an IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum (as defined in Section 2.3(a) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in Section 2.2(d)(i) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action

> Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation (either, a "**Post-Forum IFR Recommendation Decision**").
>
> (A)If the Board resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to Section 18.6(d).
>
> (B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.
>
> (C)The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an IFR Recommendation (an "**IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

> (i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:
>
> (A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation Decision;
>
> (B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and
>
> (C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section

> 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.
>
> (ii) An IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.

(f) Timelines for implementing any amendments to the IANA Naming Function Contract or IANA Naming Function SOW shall be reasonably agreed between the IFRT, ICANN and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Three representatives who are associated with ccTLD managers, appointed by the ccNSO Council. Representatives need not be associated with a ccNSO member. The ccNSO Council should use an inclusive process, which is open to all ccTLD managers, independent of their membership to the ccNSO. It is strongly recommended that the ccNSO Council reaches out to all ccTLD managers directly and or through regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in seeking volunteers;

(b) Two representatives appointed by the Registries Stakeholder Group;

(c) One representative appointed by the Registrars Stakeholder Group;

(d) One representative appointed by the Commercial Stakeholder Group;

(e) One representative appointed by the Non-Commercial Stakeholder Group;

(f) One representative appointed by the GAC;

(g) One representative appointed by the SSAC;

p>(h) One representative appointed by the RSSAC;
(i) One representative appointed by the ALAC;

(j) One liaison appointed by the CSC;

(k) One liaison who may be appointed by the ASO; and

(l) One liaison who may be appointed by the IAB.

(m) The IFRT shall also include an unlimited number of non-member, non-liaison participants.

(n) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to ICANN and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN Geographic Region, and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (c)-(f) of Section 18.7 and one appointed by the ccNSO from one of the members appointed pursuant to clauses (a)-(b) of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN.

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

(i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.

(ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN and through discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN.

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

> (i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
>
> (ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;
>
> (iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and
>
> (iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

> (i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA naming function performance by PTI and how to resolve the PTI Performance Issue;
>
> (ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and
>
> (iii) Each recommendation of the IFRT relating to the Special IFR, including but

> not limited to any recommendation to initiate an IANA Naming Function Separation Process, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance.

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

> (i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;
>
> (ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the Special IFR Recommendation; and
>
> (iii) The EC has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.12(c)(i) or (y) does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

> (i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.
>
> (ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR

Recommendation (either, a "**Post-Forum Special IFR Recommendation Decision**").

(A)If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.6(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(e) Promptly after the Board approves a Special IFR Recommendation (a "**Special IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision

shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA Naming Function Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19IANA NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA naming function instead of PTI ("**IANA Naming Function RFP**"), the selection of an IANA naming function operator other than PTI, termination or non-renewal of the IANA Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN.

(b) The Board shall establish an SCWG if each of the following occurs:

(i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same

> consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and
>
> (iv) The EC has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

> (i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.
>
> (ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").
>
> (A)If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).
>
> (B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.
>
> (C)The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a

copy of the SCWG Creation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

> (i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:
>
> (A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;
>
> (B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and
>
> (C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.
>
> (ii) An SCWG Creation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA Naming Function RFP, the SCWG shall:

> (i) Develop IANA Naming Function RFP guidelines and requirements for the performance of the IANA naming function, in a manner consistent with ICANN's publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and
>
> (ii) Solicit input from ICANN as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN) on requirements to plan and participate in the IANA Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA Naming Function RFP is approved pursuant to Section 19.4(b) and the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN, shall:

> (i) Issue the IANA Naming Function RFP;
>
> (ii) Review responses from interested candidates to the IANA Naming Function RFP, which may be received from PTI and/or any other entity or person; and
>
> (iii) Recommend the entity that ICANN should contract with to perform the IANA naming function.

(d) If the SCWG recommends an IANA Naming Function Separation Process other than the issuance of an IANA Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA Naming Function Separation Process.

Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN) and may recommend discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN shall promptly post the SCWG's final report on the Website.

Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

> (i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;
>
> (ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.4(b)(i), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and
>
> (iii) The EC has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with Section 19.4(d).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

> (i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section

2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA naming function as ICANN's independent contractor. ICANN shall not be authorized to raise fees from any TLD registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA naming function is approved pursuant to Section 19.4(b) and (ii) the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation Decision becoming final in accordance with this Section 19.4, ICANN shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(ii) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD and CENTR) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

> (v) One representative appointed by the Commercial Stakeholder Group;
>
> (vi) One representative appointed by the Non-Commercial Stakeholder Group;
>
> (vii) One representative appointed by the GAC;
>
> (viii) One representative appointed by the SSAC;
>
> (ix) One representative appointed by the RSSAC;
>
> (x) One representative appointed by the ALAC;
>
> (xi) One liaison appointed by the CSC;
>
> (xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;
>
> (xiii) One liaison who may be appointed by the ASO;
>
> (xiv) One liaison who may be appointed by the IAB; and
>
> (xv) One liaison who may be appointed by the Board.
>
> (xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v)that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

> (i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN Geographic Region, and the ccNSO

> and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region;
>
> (ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and
>
> (iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN shall select an ICANN staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN and the SCWG and PTI. Communications between the SCWG and the ICANN and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

> (i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.
>
> (ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree,

but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the guidelines and procedures applicable to ICANN Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8. ADMINISTRATIVE SUPPORT

ICANN shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 20.1. INDEMNIFICATION GENERALLY

ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity

or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.

Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN's best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN. ICANN shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN's sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN, and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN or to render it liable for any debts or obligations.

Section 21.2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 21.3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN shall be signed by such Officer or Officers, agent or agents, of ICANN and in such a manner as shall from time to time be determined by resolution of the Board.

Section 21.4. LOANS

No loans shall be made by or to ICANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN to its Directors or Officers.

Section 21.5. NOTICES

All notices to be given to the EC Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either (a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC Administration, the Decisional Participants, and ICANN will work together to implement such notice means.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: [___]

Attention: Secretary

If to a Decisional Participant or the EC Administration, addressed to the contact information available at [insert Website reference].

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

Section 22.1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN to Directors (including reimbursements of expenses) and a description of ICANN's progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

Section 22.4. BUDGETS

(a) ICANN Budget

> (i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN for the next fiscal year (the "**ICANN Budget**"), which shall be posted on the Website. The ICANN Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.
>
> (ii) Prior to approval of the ICANN Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the ICANN Budget development process, and comply with the requirements of this Section 22.4(a).
>
> (iii) Prior to approval of the ICANN Budget by the Board, a draft of the ICANN Budget shall be posted on the Website and shall be subject to public comment.
>
> (iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the ICANN Budget and may direct ICANN Staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.
>
> (v) Promptly after the Board approves an ICANN Budget (an "**ICANN Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the

ICANN Budget that is the subject of the ICANN Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in Section 2.2(a) of Annex D) relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An ICANN Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an ICANN Budget, ICANN staff and the Board shall consider the explanation provided by the EC

Administration as to why the EC has chosen to reject the ICANN Budget in determining the substance of such new ICANN Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN Budget**"), which Caretaker ICANN Budget shall be effective until such time as an ICANN Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(a).

(b) IANA Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA department, which budget shall include itemization of the direct costs for ICANN's IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN's IANA department for the next fiscal year (the "**IANA Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN planning process, ICANN shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA functions for the next fiscal year ("**PTI Budget**"). ICANN shall require PTI to consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, the IAB and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN shall require PTI to submit the PTI Budget to ICANN as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN Budget.

(ii) Prior to approval of the IANA Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs, during the IANA Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA Budget by the Board, a draft of the IANA Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the IANA Budget and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an IANA Budget (an "**IANA Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA Budget that is the subject of the IANA Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC

Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An IANA Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an IANA Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the IANA Budget in determining the substance of such new IANA Budget, which shall be subject to the procedures of this Section 22.4(b).

> (ix) If an IANA Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex F hereto ("**Caretaker IANA Budget**"), which Caretaker IANA Budget shall be effective until such time as an IANA Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(b).

(c) If an IANA Budget does not receive an EC Rejection Notice but an ICANN Budget receives an EC Rejection Notice, any subsequent revised ICANN Budget shall not alter the expenditures allocated for the IANA Budget.

(d) If an ICANN Budget does not receive an EC Rejection Notice but an IANA Budget receives an EC Rejection Notice, any subsequent revised IANA Budget shall, once approved, be deemed to automatically modify the ICANN Budget in a manner determined by the Board without any further right of the EC to reject the ICANN Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN's Mission or to fulfilling ICANN's pre-existing legal obligations and protecting ICANN from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA functions (so long as they are performed by ICANN or pursuant to contract with ICANN) and PTI, ICANN shall be required to plan for and allocate funds to ICANN's performance of the IANA functions and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN Budget and the IANA Budget shall be published on the Website.

Section 22.5. PLANS

(a) Operating Plan

> (i) At least 45 days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed operating plan of ICANN for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.
>
> (ii) Prior to approval of the Operating Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).
>
> (iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.
>
> (iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Operating Plan

and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an Operating Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Operating Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN staff shall prepare and submit to the Board a proposed strategic plan of ICANN for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Strategic Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the subject of the Strategic Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the

Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to a Strategic Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN, as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN relevant to the operation of ICANN as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN's operations or that relate to the minutiae of ICANN's financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN declines such request (as provided below), ICANN shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. ICANN shall post all Inspection Requests to the Website.

(b) ICANN may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC, (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN may not make available under applicable law because such documents or communications contain confidential information that ICANN is required to protect. If an Inspection Request is overly broad, ICANN may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN and shall not be conducted in a manner that unreasonably interferes with ICANN's operations. All such inspections shall be subject to reasonable procedures established by ICANN, including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN may require the inspectors to sign a non-disclosure agreement. The Inspecting Decisional Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN's document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN has committed fraud or that there has been a gross mismanagement of ICANN's resources, ICANN shall retain a third-party, independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

ARTICLE 23 MEMBERS

ICANN shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN document, or in any action of the Board or staff. For the avoidance of doubt, the EC is not a member of ICANN.

ARTICLE 24 OFFICES AND SEAL

Section 24.1. OFFICES

The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 24.2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 25 AMENDMENTS

Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

> (i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;
>
> (ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the

> Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; or
>
> (iii) (A) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(f) If an EC Rejection Notice is timely delivered by the EC Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC. A Standard Bylaw Amendment that has been rejected by the EC shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the

Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC Administration timely delivers an EC Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC, and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(g) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as applicable, and the substance thereof, which shall be subject to the procedures of this Section 25.2.

Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (a "**PDP Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP Amendment.

Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC, the Decisional Participants, the Supporting Organizations, the Advisory Committees nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN'S ASSETS

(a) ICANN may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets (an "**Asset Sale**") only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC Administration timely delivers an EC Approval Notice for the Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC, and the Asset Sale may be consummated by ICANN, but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(f) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, ICANN shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall be subject to the procedures

of this Article 26.

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN Accountability ("**CCWG-Accountability**") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO, ALAC, ccNSO, GAC, ASO and SSAC ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

> (i) Improvements to ICANN's standards for diversity at all levels;
>
> (ii) ICANN staff accountability;
>
> (iii) Supporting Organization and Advisory Committee accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;
>
> (iv) Improvements to ICANN's transparency, focusing on enhancements to ICANN's existing DIDP, transparency of ICANN's interactions with governments, improvements to ICANN's whistleblower policy and transparency of Board deliberations;
>
> (v) Developing and clarifying the FOI-HR (as defined in Section 27.2);
>
> (vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability;
>
> (vii) Considering enhancements to the Ombudsman's role and function;
>
> (viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and
>
> (ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report (**"Work Stream 1 Recommendations"**). For the avoidance of doubt, that

process and criteria includes:

> (i) All Work Stream 2 Recommendations must further the following principles:
>
> (A)Support and enhance the multistakeholder model;
>
> (B)Maintain the security, stability and resiliency of the DNS;
>
> (C)Meet the needs and expectations of the global customers and partners of the IANA services;
>
> (D)Maintain the openness of the Internet; and
>
> (E)Not result in ICANN becoming a government-led or an inter-governmental organization.
>
> (ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.
>
> (iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.
>
> (iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.
>
> If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.
>
> (v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board shall provide detailed rationale to accompany its action. If the Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall be the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN's other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.

Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN in compliance with the Bylaws.

Section 27.4. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN shall continue in effect according to their terms.

Annex A: GNSO Policy Development Process

The following process shall govern the GNSO policy development process ("**PDP**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

a. Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party Is affected by the issue;

b. Formal initiation of the Policy Development Process by the Council;

c. Formation of a Working Group or other designated work method;

d. Initial Report produced by a Working Group or other designated work method;

e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;

f. Council approval of PDP Recommendations contained in the Final Report, by the required thresholds;

g. PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and

h. Board approval of PDP Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual ("**PDP Manual**") within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request. An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO Council; or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report

(a "**Preliminary Issue Report**"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the request for the Issue Report;

c. How that party is affected by the issue, if known;

d. Support for the issue to initiate the PDP, if known;

e. The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.

f. The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP Manual, shall initiate a PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP Manual.

Section 8. **Preparation of the Board Report**

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP, from policy suggestion to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each PDP issue. Such status page will outline the completed and upcoming steps in the PDP process, and contain links to key resources (e.g. Reports, Comments Fora, WG Discussions, etc.).

Section 12. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments For a**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

"**Supermajority Vote**" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO Council.

"**Staff Manager**" means an ICANN staff person(s) who manages the PDP.

"**GNSO Supermajority Vote**" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("**EPDP**"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive,

pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO Expedited Policy Development Process**

The following elements are required at a minimum to develop expedited GNSO policy recommendations, including recommendations that could result in amendments to an existing Consensus Policy, as part of a GNSO Expedited Policy Development Process:

a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council, including an EPDP scoping document;

b. Formation of an EPDP Team or other designated work method;

c. Initial Report produced by an EPDP Team or other designated work method;

d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;

e. GNSO Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;

f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and

g. Board approval of EPDP Recommendation(s).

Section 2. **Expedited Policy Development Process Manual**

The GNSO shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO Policy Development Process Manual (PDP Manual), described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The E PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d) .

Section 3. **Initiation of the EPDP**

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in Section 11.3(i)(xii) of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C;
2. Origin of issue (e.g. previously completed PDP);
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP that was not completed or other similar effort, including relevant supporting information in either case;
5. If not provided as part of item 4, the opinion of the ICANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the Mission, policy process and more specifically the role of the GNSO;
6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers);
7. Method of operation, if different from GNSO Working Group Guidelines;
8. Decision-making methodology for EPDP mechanism, if different from GNSO Working Group Guidelines;
9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and co mmunicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 7. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN staff to work with the GNSO Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each EPDP

issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO Guidance Process

The following process shall govern the GNSO guidance process ("**GGP**") until such time as modifications are recommended to and approved by the Board . The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO Guidance Process**

The following elements are required at a minimum to develop GNSO guidance:

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. **GNSO Guidance Process Manual**

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Initiation of the GGP**

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN Board. Initiation of a GGP requires a vote as set forth in Section 11.3(i)(xvi) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Section 11.3(i)(xvii).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation, if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism, if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board

Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN.

Section 7. **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct ICANN Staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN staff person(s) who manages the GGP.

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("**PDP**").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

a. *Council.* The ccNSO Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.

b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created.

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue;

d. Support for the issue to initiate the PDP;

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
1) The issue is within the scope of the Mission;

2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein ("**PDP Time Line**").

g. g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken

place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or, where the Council employs a vote by e-mail, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes:

a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and

expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

6. Public Notification of Initiation of the PDP and Comment Period

After initiation of the PDP, ICANN shall post a notification of such action to the Website and to the other ICANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "**Comment Report**") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;

2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and

3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of

a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information*.

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

(i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. Outside Advisors. The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("**Preliminary Task Force Report**") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "**Task Force Report**") and post it on the Website and to the other ICANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;

2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;

3. An analysis of how the issue would affect each Region, including any financial impact on the Region;

4. An analysis of the period of time that would likely be necessary to implement the policy; and

5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.

c. The Council shall formally request the Chair of the GAC to offer opinion or advice.

d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "**Council Recommendation**"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "**Members Report**"). The Members Report must contain at least the following:

a. A clear statement of the Council's recommendation;

b. The Final Report submitted to the Council; and

c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed if at least 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO Recommendation being made in accordance with Item 13 incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "**Board Report**"). The Board Report must contain at least the following:

a. A clear statement of the ccNSO recommendation;

b. The Final Report submitted to the Council; and

c. the Members' Report.

15. Board Vote

a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account

procedures for Board consideration.

b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "**Supplemental Recommendation**"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13 . In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("**Supplemental Board Statement**").

5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

a. Issue Report;

b. PDP Time Line;

c. Comment Report;

d. Regional Statement(s);

e. Preliminary Task Force Report;

f. Task Force Report;

g. Initial Report;

h. Final Report;

i. Members' Report;

j. Board Report;

k. Board Statement;

l. Supplemental Members' Report; and

m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,

2. A zone file is in turn used in TLD name servers.

Within a **TLD** two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database ("**Data Entry Function**") and
2. Maintaining and ensuring upkeep of name-servers for the TLD ("**Name Server Function**").

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

a. under which data will be collected and entered into a database or data changed (at the TLD level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF)

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper

functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;
2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers
Policy role: IETF, RSSAC (ICANN)
Executive role: Root Server System Operators
Accountability role: RSSAC (ICANN)

Level 2: ccTLD Registry Name Servers in respect to interoperability
Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized
Executive role: ccTLD Manager
Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD Manager, IETF (RFC)
Executive role: Registrant

Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO Policy Development Process (ICANN)
Executive role: ICANN (IANA)
Accountability role: ICANN community, ccTLD Managers, (national authorities in some cases)

Level 2: ccTLD Registry
Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure
Executive role: ccTLD Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels
Policy role: Registrant
Executive role: Registrant
Accountability role: Registrant, users of lower-level domain names

ANNEX D: EC MECHANISM

ARTICLE 1 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO APPROVE APPROVAL ACTIONS

Section 1.1. APPROVAL ACTIONS

The processes set forth in this Article 1 shall govern the escalation procedures for the EC's exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;

b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws; and

c. Asset Sales, as contemplated by Article 26 of the Bylaws.

Section 1.2. APPROVAL PROCESS

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that

implements such PDP (as applicable, a "**PDP Fundamental Bylaw Statement**" or "**PDP Articles Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw Amendment PDP Decisional Participant**" or "**Articles Amendment PDP Decisional Participant**"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the "**Approval Process**."

Section 1.3. APPROVAL ACTION COMMUNITY FORUM

a. ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an "**Approval Action Community Forum**").

b. If the EC Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date ("**Approval Action Community Forum Period**"). If the EC Administration requests that the Approval Action Community Forum be held during the next scheduled ICANN public meeting, the Approval Action Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the EC Administration. If the Approval Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Approval Action Community Forum, which ICANN shall promptly post on the Website.

e. The EC Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.

f. ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

g. ICANN staff and Directors representing the Board are expected to attend the Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.

h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.

i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN shall promptly post on the Website.

j. ICANN will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Approval Action Community Forum.

Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver a written notice ("**EC Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC has approved the Approval Action if:

> (i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;

(ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant if the Board Notice included a PDP Fundamental Bylaw Statement) and (B) not objected to by more than one Decisional Participant; or

(iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant if the Board Notice included a PDP Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC Approval Notice, (iii) Approval Process Termination Notice, (iv) written explanation provided by the EC Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC's exercise of its right to reject the following (each, a "**Rejection Action**") under the Bylaws:

a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;

b. IFR Recommendation Decisions, as contemplated by Section 18.6(d) of the Bylaws;

c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;

d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;

e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;

f. ICANN Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;

g. IANA Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;

h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;

i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and

j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

(i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN Budget, an IANA Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN's Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN's stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP, citing the specific PDP and the provision

in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP ("**PDP Standard Bylaw Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection Action Petition Period, the Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection Action Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Rejection Action Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

(C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN Budget or IANA Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Rejection Action Petitioning Decisional Participant or (y) one of the Rejection Action Supporting Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

a. If the EC Administration receives a Rejection Action Supported Petition under Section 2.2(d) of this Annex D during the Rejection Action Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC Administration receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.

b. If a publicly-available conference call has been requested in a Rejection Action Supported Petition, ICANN shall, at the direction of the EC Administration,

schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.

c. The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget) on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget may only be held at a scheduled ICANN public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period, without any extension of such Rejection Action Community Forum Period.

d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Rejection Action Community Forum, which ICANN shall promptly post on the Website.

e. The EC Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.

f. ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening

of and during the Rejection Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

g. ICANN staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN Budget, IANA Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.

h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant(s).

i. During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC Administration.

j. ICANN will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Rejection Action Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing

prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC Consensus Statement):

> (i) A Rejection Action Supported Petition relating to a Rejection Action other than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or
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> (ii) A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that is (A) supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP Decisional Participant if the Rejection Action Supported Petition included a PDP Standard Bylaw Statement) and (B) not objected to by more than one Decisional Participant.

(c) If no Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i) or (ii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.

(d) ICANN shall promptly post to the Website any (i) Rejection Action Board Notice, (ii) Rejection Action Petition, (iii) Rejection Action Petition Notice, (iv) Rejection Action Supported Petition, (v) EC Rejection Notice and the written explanation provided by the EC Administration as to why the EC has chosen to reject the Rejection Action, (vi) Rejection Process Termination Notice, and (vii) other notices the Secretary receives under this Article 2.

ARTICLE 3 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REMOVE DIRECTORS AND RECALL THE BOARD

Section 3.1. NOMINATING COMMITTEE DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove a Director holding Seats 1 through 8 and initiate the Nominating Committee Director Removal Process ("**Nominating Committee Director Removal Petition**"). Each Nominating Committee Director Removal Petition shall set forth the rationale upon which such individual seeks to remove such Director. The process set forth in this Section 3.1 of Annex D is referred to herein as the "**Nominating Committee Director Removal Process**."

(b) During the period beginning on the date that the Decisional Participant received the Nominating Committee Director Removal Petition (such date of receipt, the "**Nominating Committee Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Nominating Committee Director Removal Petition Date (as it relates to a particular Director, the "**Nominating Committee Director Removal Petition Period**"), the Decisional Participant that has received a Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Petitioned Decisional Participant**") shall either accept or reject such Nominating Committee Director Removal Petition; provided that a Nominating Committee Director Removal Petitioned Decisional Participant shall not accept a Nominating Committee Director Removal Petition if, during the same term, the Director who is the subject of such Nominating Committee Director Removal Petition had previously been subject to a Nominating Committee Director Removal Petition that led to a Nominating Committee Director Removal Community Forum (as discussed in Section 3.1(e) of this Annex D).

(c) During the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Petitioned Decisional Participant shall invite the Director subject to the Nominating Committee Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the Nominating Committee Director Removal Petition and the Nominating Committee Director Removal Petitioned Decisional Participant's representative on the EC Administration. The Nominating Committee Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the Nominating Committee Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Nominating Committee Director Removal Petitioned Decisional Participant shall not accept the Nominating Committee Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.1(b) of this Annex D, a Nominating Committee Director Removal Petitioned Decisional Participant accepts a Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Period (such Decisional Participant, the "**Nominating Committee Director Removal Petitioning Decisional Participant**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall, within twenty-four (24) hours of its acceptance of the Nominating Committee Director Removal Petition, provide written notice ("**Nominating Committee Director Removal Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. The Nominating Committee Director Removal Petition Notice shall include the rationale upon which removal of the affected Director is sought. The Nominating Committee Director Removal Process shall thereafter continue pursuant to Section 3.1(d) of this Annex D.

(ii) If the EC Administration has not received a Nominating Committee Director Removal Petition Notice pursuant to Section 3.1(c)(i) of this Annex D during the

> Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Process shall automatically be terminated with respect to the applicable Nominating Committee Director Removal Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Period, deliver to the Secretary a notice certifying that the Nominating Committee Director Removal Process has been terminated with respect to the applicable Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Process Termination Notice**").

(d) Following the delivery of a Nominating Committee Director Removal Petition Notice to the EC Administration by a Nominating Committee Director Removal Petitioning Decisional Participant pursuant to Section 3.1(c)(i) of this Annex D, the Nominating Committee Director Removal Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Nominating Committee Director Removal Petition. The Nominating Committee Director Removal Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

> (i) If the Nominating Committee Director Removal Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Nominating Committee Director Removal Supporting Decisional Participant**") during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Nominating Committee Director Removal Petition Period (the "**Nominating Committee Director Removal Petition Support Period**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Nominating Committee Director Removal Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Nominating Committee Director Removal Supporting Decisional Participant. Each Nominating Committee Director Removal Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Nominating Committee Director Removal Petition. Such Nominating Committee Director Removal Supported Petition shall include:
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> (A) a supporting rationale in reasonable detail;
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> (B) contact information for at least one representative who has been designated by the Nominating Committee Director Removal Petitioning Decisional Participant who shall act as a liaison with respect to the Nominating Committee Director Removal Supported Petition;
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> (C) a statement as to whether or not the Nominating Committee Director Removal Petitioning Decisional Participant and/or the Nominating Committee Director Removal Supporting Decisional Participant requests that ICANN

organize a publicly-available conference call prior to the Nominating Committee Director Removal Community Forum (as defined in Section 3.1(e) of this Annex D) for the community to discuss the Nominating Committee Director Removal Supported Petition; and

(D) a statement as to whether the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant have determined to hold the Nominating Committee Director Removal Community Forum during the next scheduled ICANN public meeting.

The Nominating Committee Director Removal Process shall thereafter continue for such Nominating Committee Director Removal Petition pursuant to Section 3.1(e) of this Annex D.

(ii) The Nominating Committee Director Removal Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Support Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice if the Nominating Committee Director Removal Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Support Period.

(e) If the EC Administration receives a Nominating Committee Director Removal Supported Petition under Section 3.1(d) of this Annex D during the Nominating Committee Director Removal Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Nominating Committee Director Removal Supported Petition ("**Nominating Committee Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in a Nominating Committee Director Removal Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Nominating Committee Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability.

(ii) The Nominating Committee Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period ("**Nominating Committee Director Removal Community Forum Period**") unless the Nominating Committee Director

Removal Supported Petition requested that the Nominating Committee Director Removal Community Forum be held during the next scheduled ICANN public meeting, in which case the Nominating Committee Director Removal Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s); provided, that, the date and time of any Nominating Committee Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability. If the Nominating Committee Director Removal Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period, the Nominating Committee Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Nominating Committee Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Nominating Committee Director Removal Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Nominating Committee Director Removal Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the Nominating Committee Director Removal Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Nominating Committee Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Nominating Committee Director Removal Petitioning Decisional Participant or the Nominating Committee Director Removal Supporting Decisional Participant, nor the individual who initiated the Nominating Committee Director Removal Petition, shall be permitted to participate in the management or moderation of the Nominating Committee Director Removal Community Forum.

(v) The Director subject to the Nominating Committee Director Removal Supported Petition, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Nominating Committee Director Removal Supported Petition prior to the convening of and during the Nominating Committee Director Removal Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) The Director who is the subject of the Nominating Committee Director

Removal Supported Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the Nominating Committee Director Removal Community Forum in order to address the issues raised in the Nominating Committee Director Removal Supported Petition.

(vii) If the Nominating Committee Director Removal Petitioning Decisional Participant and each of the Nominating Committee Director Removal Supporting Decisional Participants for an applicable Nominating Committee Director Removal Supported Petition agree before, during or after the Nominating Committee Director Removal Community Forum that the issue raised in such Nominating Committee Director Removal Supported Petition has been resolved, such Nominating Committee Director Removal Supported Petition shall be deemed withdrawn and the Nominating Committee Director Removal Process with respect to such Nominating Committee Director Removal Supported Petition will be terminated. If a Nominating Committee Director Removal Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Nominating Committee Director Removal Supported Petition, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. For the avoidance of doubt, the Nominating Committee Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s).

(viii) During the Nominating Committee Director Removal Community Forum Period, an additional one or two Nominating Committee Director Removal Community Forums may be held at the discretion of a Nominating Committee Director Removal Petitioning Decisional Participant and a related Nominating Committee Director Removal Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Nominating Committee Director Removal Community Forum and shall promptly post on the Website a public record of the Nominating Committee Director Removal Community Forum as well as all written submissions of the Director who is the subject of the Nominating Committee Director Removal Supported Petition, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Nominating Committee Director Removal Community Forum.

(f) Following the expiration of the Nominating Committee Director Removal Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period (such period, the "**Nominating Committee Director Removal Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Nominating Committee Director Removal Supported Petition, (ii) objects to such Nominating Committee Director Removal Supported

Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Nominating Committee Director Removal Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Nominating Committee Director Removal Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Nominating Committee Director Removal Decision Period).

(g) The EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver a written notice ("**Nominating Committee Director Removal Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of Section 3.1 of this Annex D, the EC has approved of the removal of the Director who is subject to the Nominating Committee Director Removal Process if the Nominating Committee Director Removal Supported Petition is (i) supported by three or more Decisional Participants and (ii) not objected to by more than one Decisional Participant.

(h) Upon the Secretary's receipt of a Nominating Committee Director Removal Notice, the Director subject to such Nominating Committee Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(i) If the Nominating Committee Director Removal Supported Petition does not obtain the support required by Section 3.1(g) of this Annex D, the Nominating Committee Director Removal Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. The Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(j) If neither a Nominating Committee Director Removal Notice nor a Nominating Committee Director Removal Process Termination Notice are received by the Secretary prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period, the Nominating Committee Director Removal Process shall automatically terminate and the Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and shall not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(k) Notwithstanding anything in this Section 3.1 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of a Nominating Committee Director Removal Process ceases to be a Director, the Nominating Committee Director Removal Process for such Director shall automatically terminate without any further action of ICANN or the EC Administration.

(l) ICANN shall promptly post to the Website any (i) Nominating Committee Director

Removal Petition, (ii) Nominating Committee Director Removal Petition Notice, (iii) Nominating Committee Director Removal Supported Petition, (iv) Nominating Committee Director Removal Notice and the written explanation provided by the EC Administration as to why the EC has chosen to remove the relevant Director, (v) Nominating Committee Director Removal Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.1.

Section 3.2. SO/AC DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to the ASO, ccNSO, GNSO or At-Large Community (as applicable, the "**Applicable Decisional Participant**") seeking to remove a Director who was nominated by that Supporting Organization or the At-Large Community in accordance with Section 7.2(a) of the Bylaws, and initiate the SO/AC Director Removal Process ("**SO/AC Director Removal Petition**"). The process set forth in this Section 3.2 of this Annex D is referred to herein as the "**SO/AC Director Removal Process**."

(b) During the period beginning on the date that the Applicable Decisional Participant received the SO/AC Director Removal Petition (such date of receipt, the "**SO/AC Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the SO/AC Director Removal Petition Date (as it relates to a particular Director, the "**SO/AC Director Removal Petition Period**"), the Applicable Decisional Participant shall either accept or reject such SO/AC Director Removal Petition pursuant to the internal procedures of the Applicable Decisional Participant for the SO/AC Director Removal Petition; provided that the Applicable Decisional Participant shall not accept an SO/AC Director Removal Petition if, during the same term, the Director who is the subject of such SO/AC Director Removal Petition had previously been subject to an SO/AC Director Removal Petition that led to an SO/AC Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D).

(c) During the SO/AC Director Removal Petition Period, the Applicable Decisional Participant shall invite the Director subject to the SO/AC Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the SO/AC Director Removal Petition and the Applicable Decisional Participant's representative on the EC Administration. The SO/AC Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the SO/AC Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Applicable Decisional Participant shall not accept the SO/AC Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

> (i) If, in accordance with Section 3.2(b), the Applicable Decisional Participant accepts an SO/AC Director Removal Petition during the SO/AC Director Removal Petition Period, the Applicable Decisional Participant shall, within twenty-four (24) hours of the Applicable Decisional Participant's acceptance of the SO/AC Director Removal Petition, provide written notice ("**SO/AC Director**

Removal Petition Notice") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. Such SO/AC Director Removal Petition Notice shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Applicable Decisional Participant who shall act as a liaison with respect to the SO/AC Director Removal Petition Notice;

(C) a statement as to whether or not the Applicable Decisional Participant requests that ICANN organize a publicly-available conference call prior to the SO/AC Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D) for the community to discuss the SO/AC Director Removal Petition; and

(D) a statement as to whether the Applicable Decisional Participant has determined to hold the SO/AC Director Removal Community Forum during the next scheduled ICANN public meeting.

The SO/AC Director Removal Process shall thereafter continue for such SO/AC Director Removal Petition pursuant to Section 3.2(d) of this Annex D.

(ii) If the EC Administration has not received an SO/AC Director Removal Petition Notice pursuant to Section 3.2(c)(i) during the SO/AC Director Removal Petition Period, the SO/AC Director Removal Process shall automatically be terminated with respect to the applicable SO/AC Director Removal Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the SO/AC Director Removal Petition Period, deliver to the Secretary a notice certifying that the SO/AC Director Removal Process has been terminated with respect to the applicable SO/AC Director Removal Petition ("**SO/AC Director Removal Process Termination Notice**").

(d) If the EC Administration receives an SO/AC Director Removal Petition Notice under Section 3.2(c) of this Annex D during the SO/AC Director Removal Petition Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the SO/AC Director Removal Petition Notice ("**SO/AC Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in an SO/AC Director Removal Petition Notice, ICANN shall, at the direction of the EC Administration, schedule such call prior to any SO/AC Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the SO/AC Director Removal Petition Notice regarding his or her availability.

(ii) The SO/AC Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the SO/AC

Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Petition Period ("**SO/AC Director Removal Community Forum Period**") unless the SO/AC Director Removal Petition Notice requested that the SO/AC Director Removal Community Forum be held during the next scheduled ICANN public meeting, in which case the SO/AC Director Removal Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Applicable Decisional Participant; provided, that the date and time of any SO/AC Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the SO/AC Director Removal Petition Notice regarding his or her availability. If the SO/AC Director Removal Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Petition Period, the SO/AC Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The SO/AC Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the SO/AC Director Removal Community Forum is held during an ICANN public meeting, face-to-face meetings. If the SO/AC Director Removal Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the SO/AC Director Removal Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the SO/AC Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Applicable Decisional Participant, nor the individual who initiated the SO/AC Director Removal Petition, shall be permitted to participate in the management or moderation of the SO/AC Director Removal Community Forum.

(v) The Director subject to the SO/AC Director Removal Petition Notice, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the SO/AC Director Removal Petition Notice prior to the convening of and during the SO/AC Director Removal Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) The Director who is the subject of the SO/AC Director Removal Petition Notice and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the SO/AC Director Removal Community Forum in order to address the issues raised in the SO/AC Director Removal Petition Notice.

(vii) If the Applicable Decisional Participant agrees before, during or after the SO/AC Director Removal Community Forum that the issue raised in such SO/AC Director Removal Petition Notice has been resolved, such SO/AC Director Removal Petition Notice shall be deemed withdrawn and the SO/AC Director Removal Process with respect to such SO/AC Director Removal Petition Notice will be terminated. If an SO/AC Director Removal Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the SO/AC Director Removal Petition Notice, deliver to the Secretary an SO/AC Director Removal Process Termination Notice. For the avoidance of doubt, the SO/AC Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Applicable Decisional Participant.

(viii) During the SO/AC Director Removal Community Forum Period, an additional one or two SO/AC Director Removal Community Forums may be held at the discretion of the Applicable Decisional Participant or the EC Administration.

(ix) ICANN will provide support services for the SO/AC Director Removal Community Forum and shall promptly post on the Website a public record of the SO/AC Director Removal Community Forum as well as all written submissions of the Director who is the subject of the SO/AC Director Removal Petition Notice, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the SO/AC Director Removal Community Forum.

(e) Following the expiration of the SO/AC Director Removal Community Forum Period, ICANN shall, at the request of the EC Administration, issue a request for comments and recommendations from the community, which shall be delivered to the Secretary for prompt posting on the Website along with a means for comments and recommendations to be submitted to ICANN on behalf of the EC Administration. This comment period shall remain open until 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the request for comments and recommendations was posted on the Website (the "**SO/AC Director Removal Comment Period**"). ICANN shall promptly post on the Website all comments and recommendations received by ICANN during the SO/AC Director Removal Comment Period.

(f) Following the expiration of the SO/AC Director Removal Comment Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Comment Period (such period, the "**SO/AC Director Removal Decision Period**"), the Applicable Decisional Participant shall inform the EC Administration in writing as to whether the Applicable Decisional Participant has support for the SO/AC Director Removal Petition Notice within the Applicable Decisional Participant of a three-quarters majority as determined pursuant to the internal procedures of the Applicable Decisional Participant ("**SO/AC Director Removal Notice**"). The Applicable Decisional Participant shall, within twenty-four (24) hours of obtaining such support,

deliver the SO/AC Director Removal Notice to the EC Administration, the other Decisional Participants and Secretary, and ICANN shall, at the direction of the Applicable Decisional Participant, concurrently post on the Website an explanation provided by the Applicable Decisional Participant as to why the Applicable Decisional Participant has chosen to remove the affected Director. Upon the Secretary's receipt of the SO/AC Director Removal Notice from the EC Administration, the Director subject to such SO/AC Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(g) If the SO/AC Director Removal Petition Notice does not obtain the support required by Section 3.2(f) of this Annex D, the SO/AC Director Removal Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the failure to obtain such support, deliver to the Secretary an SO/AC Director Removal Process Termination Notice. The Director who was subject to the SO/AC Director Removal Process shall remain on the Board and shall not be subject to the SO/AC Director Removal Process for the remainder of the Director's current term.

(h) If neither an SO/AC Director Removal Notice nor an SO/AC Director Removal Process Termination Notice are received by the Secretary prior to the expiration of the SO/AC Director Removal Decision Period, the SO/AC Director Removal Process shall automatically terminate and the Director who was subject to the SO/AC Director Removal Process shall remain on the Board and shall not be subject to the SO/AC Director Removal Process for the remainder of the Director's current term.

(i) Notwithstanding anything in this Section 3.2 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of an SO/AC Director Removal Process ceases to be a Director, the SO/AC Director Removal Process for such Director shall automatically terminate without any further action of ICANN or the EC Administration.

(j) ICANN shall promptly post to the Website any (i) SO/AC Director Removal Petition, (ii) SO/AC Director Removal Petition Notice, (iii) SO/AC Director Removal Notice and the written explanation provided by the EC Administration as to why the EC has chosen to remove the relevant Director, (iv) SO/AC Director Removal Process Termination Notice, and (v) other notices the Secretary receives under this Section 3.2.

Section 3.3. BOARD RECALL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("**Board Recall Petition**"), provided that a Board Recall Petition cannot be submitted solely on the basis of a matter decided by a Community IRP if (i) such Community IRP was initiated in connection with the Board's implementation of GAC Consensus Advice and (ii) the EC did not prevail in such Community IRP. Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board. The process set forth in this Section 3.3 of this Annex D is referred to herein as the "**Board Recall Process**."

(b) A Decisional Participant that has received a Board Recall Petition shall either accept or reject such Board Recall Petition during the period beginning on the date the Decisional Participant received the Board Recall Petition ("**Board Recall Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Board Recall Petition Date (the "**Board Recall Petition Period**").

> (i) If, in accordance with Section 3.3(b) of this Annex D, a Decisional Participant accepts a Board Recall Petition during the Board Recall Petition Period (such Decisional Participant, the "**Board Recall Petitioning Decisional Participant**"), the Board Recall Petitioning Decisional Participant shall, within twenty-four (24) hours of the expiration of its acceptance of the Board Recall Petition, provide written notice ("**Board Recall Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. The Board Recall Petition Notice shall include the rationale upon which removal of the Board is sought. The Board Recall Process shall thereafter continue pursuant to Section 3.3(c) of this Annex D.
>
> (ii) If the EC Administration has not received a Board Recall Petition Notice pursuant to Section 3.3(b)(i) of this Annex D during the Board Recall Petition Period, the Board Recall Process shall automatically be terminated with respect to the Board Recall Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Period, deliver to the Secretary a notice certifying that the Board Recall Process has been terminated with respect to the Board Recall Petition ("**Board Recall Process Termination Notice**").

(c) Following the delivery of a Board Recall Petition Notice to the EC Administration by a Board Recall Petitioning Decisional Participant pursuant to Section 3.3(b)(i) of this Annex D, the Board Recall Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Board Recall Petition. The Board Recall Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

> (i) If the Board Recall Petitioning Decisional Participant obtains the support of at least two other Decisional Participants (each, a "**Board Recall Supporting Decisional Participant**") during the period beginning upon the expiration of the Board Recall Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Board Recall Petition Period (the "**Board Recall Petition Support Period**"), the Board Recall Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Board Recall Supported Petition**") within twenty-four hours of receiving the support of at least two Board Recall Supporting Decisional Participants. Each Board Recall Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Board Recall Petition. Such Board Recall Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Board Recall Petitioning Decisional Participant who shall act as a liaison with respect to the Board Recall Supported Petition;

(C) a statement as to whether or not the Board Recall Petitioning Decisional Participant and/or the Board Recall Supporting Decisional Participants requests that ICANN organize a publicly-available conference call prior to the Board Recall Community Forum (as defined in Section 3.3(d) of this Annex D) for the community to discuss the Board Recall Supported Petition; and

(D) a statement as to whether the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants have determined to hold the Board Recall Community Forum during the next scheduled ICANN public meeting.

The Board Recall Process shall thereafter continue for such Board Recall Supported Petition pursuant to Section 3.3(d) of this Annex D.

(ii) The Board Recall Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Support Period, deliver to the Secretary a Board Recall Process Termination Notice if the Board Recall Petitioning Decisional Participant is unable to obtain the support of at least two other Decisional Participants for its Board Recall Petition during the Board Recall Petition Support Period.

(d) If the EC Administration receives a Board Recall Supported Petition under Section 3.3(c) of this Annex D during the Board Recall Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Board Recall Supported Petition ("**Board Recall Community Forum**").

(i) If a publicly-available conference call has been requested in a Board Recall Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Board Recall Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Board regarding the availability of the Directors.

(ii) The Board Recall Community Forum shall be convened and concluded during the period beginning upon the expiration of the Board Recall Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Petition Support Period ("**Board Recall Community Forum Period**") unless the Board Recall Supported Petition requested that the Board Recall Community Forum be held during the next scheduled ICANN public meeting, in which case the Board Recall Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time

determined by ICANN, taking into account any date and/or time requested by the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants; provided, that, the date and time of any Board Recall Community Forum shall be determined after consultation with the Board regarding the availability of the Directors. If the Board Recall Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Petition Support Period, the Board Recall Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Board Recall Community Forum shall have at least one face-to-face meeting and may also be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects. If the Board Recall Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the Board Recall Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Board Recall Community Forum in a fair and neutral manner; provided that no individual from the Board Recall Petitioning Decisional Participant or a Board Recall Supporting Decisional Participant, nor the individual who initiated the Board Recall Petition, shall be permitted to participate in the management or moderation of the Board Recall Community Forum.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Board Recall Supported Petition prior to the convening of and during the Board Recall Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and the full Board are expected to attend the Board Recall Community Forum in order to address the issues raised in the Board Recall Supported Petition.

(vii) If the Board Recall Petitioning Decisional Participant and each of the Board Recall Supporting Decisional Participants for the Board Recall Supported Petition agree before, during or after the Board Recall Community Forum that the issue raised in such Board Recall Supported Petition has been resolved, such Board Recall Supported Petition shall be deemed withdrawn and the Board Recall Process with respect to such Board Recall Supported Petition will be terminated. If a Board Recall Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Board Recall Supported Petition, deliver to the Secretary a Board Recall Process Termination Notice. For the avoidance of doubt, the Board Recall Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Board Recall

> Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants.
>
> (viii) During the Board Recall Community Forum Period, an additional one or two Board Recall Community Forums may be held at the discretion of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants, or the EC Administration.
>
> (ix) ICANN will provide support services for the Board Recall Community Forum and shall promptly post on the Website a public record of the Board Recall Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Board Recall Community Forum.

(e) Following the expiration of the Board Recall Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Community Forum Period (such period, the "**Board Recall Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Board Recall Supported Petition, (ii) objects to such Board Recall Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Board Recall Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to expiration of the Board Recall Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Board Recall Decision Period).

(f) The EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver a written notice ("**EC Board Recall Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 3.3 of this Annex D, the EC has resolved to remove all Directors (other than the President) if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if an IRP Panel found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles or Bylaws) a Board Recall Supported Petition (i) is supported by four or more Decisional Participants, and (ii) is not objected to by more than one Decisional Participant.

(g) Upon the Secretary's receipt of an EC Board Recall Notice, all Directors (other than the President) shall be effectively removed from office and shall no longer be Directors and such vacancies shall be filled in accordance with Section 7.12 of the Bylaws.

(h) If the Board Recall Supported Petition does not obtain the support required by Section 3.3(f) of this Annex D, the Board Recall Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver to the Secretary a Board Recall Process Termination Notice. All Directors shall remain on the Board.

(i) If neither an EC Board Recall Notice nor a Board Recall Process Termination Notice

are received by the Secretary prior to the expiration of the Board Recall Decision Period, the Board Recall Process shall automatically terminate and all Directors shall remain on the Board.

(j) ICANN shall promptly post to the Website any (i) Board Recall Petition, (ii) Board Recall Petition Notice, (iii) Board Recall Supported Petition, (iv) EC Board Recall Notice and the written explanation provided by the EC Administration as to why the EC has chosen to recall the Board, (v) Board Recall Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.3.

Article 4 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO INITIATE MEDIATION, A COMMUNITY IRP OR RECONSIDERATION REQUEST

Section 4.1. MEDIATION INITIATION

(a) If the Board refuses or fails to comply with a decision by the EC delivered to the Secretary pursuant to an EC Approval Notice, EC Rejection Notice, Nominating Committee Director Removal Notice, SO/AC Director Removal Notice or EC Board Recall Notice pursuant to and in compliance with Article 1, Article 2 or Article 3 of this Annex D, or rejects or otherwise does not take action that is consistent with a final IFR Recommendation, Special IFR Recommendation, SCWG Creation Recommendation or SCWG Recommendation, as applicable (each, an "**EC Decision**"), the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate mediation with the Board in relation to that EC Decision as contemplated by Section 4.7 of the Bylaws, by delivering a notice to the EC Administration, the Decisional Participants and the Secretary requesting the initiation of a mediation ("**Mediation Initiation Notice**"). ICANN shall promptly post to the Website any Mediation Initiation Notice.

(b) As soon as practicable after receiving a Mediation Initiation Notice, the EC Administration and the Secretary shall initiate mediation, which shall proceed in accordance with Section 4.7 of the Bylaws.

Section 4.2. COMMUNITY IRP

(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a Community IRP (a "**Community IRP Petitioning Decisional Participant**"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC Administration and the Decisional Participants requesting the initiation of a Community IRP ("**Community IRP Petition**"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "**Community IRP Initiation Process**."

(b) Following the delivery of a Community IRP Petition to the EC Administration by a Community IRP Petitioning Decisional Participant pursuant to Section 4.2(a) of this

Annex D (which delivery date shall be referred to herein as the "**Community IRP Notification Date**"), the Community IRP Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition. The Community IRP Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Community IRP Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community IRP Supporting Decisional Participant**") during the period beginning on the Community IRP Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the Community IRP Notification Date (the "**Community IRP Petition Support Period**"), the Community IRP Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Community IRP Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community IRP Supporting Decisional Participant. Each Community IRP Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community IRP Petition. Such Community IRP Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community IRP Petitioning Decisional Participant who shall act as a liaison with respect to the Community IRP Supported Petition;

(C) a statement as to whether or not the Community IRP Petitioning Decisional Participant and/or the Community IRP Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Community IRP Community Forum (as defined in Section 4.2(c) of this Annex D) for the community to discuss the Community IRP Supported Petition;

(D) a statement as to whether the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant have determined to hold the Community IRP Community Forum during the next scheduled ICANN public meeting;

(E) where the Community IRP Supported Petition relates to a Fundamental Bylaw Amendment, a PDP Fundamental Bylaw Statement if applicable and, if so, the name of the Fundamental Bylaw Amendment PDP Decisional Participant;

(F)where the Community IRP Supported Petition relates to an Articles Amendment, a PDP Articles Statement if applicable and, if so, the name of the Articles Amendment PDP Decisional Participant;

(G)where the Community IRP Supported Petition relates to a Standard Bylaw Amendment, a PDP Standard Bylaw Statement if applicable and, if so, the

name of the Standard Bylaw Amendment PDP Decisional Participant; and

(H) where the Community IRP Supported Petition relates to a policy recommendation of a cross community working group chartered by more than one Supporting Organization (**"CCWG Policy Recommendation"**), a statement citing the specific CCWG Policy Recommendation and related provision in the Community IRP Supported Petition (**"CCWG Policy Recommendation Statement"**), and, if so, the name of any Supporting Organization that is a Decisional Participant that approved the CCWG Policy Recommendation (**"CCWG Policy Recommendation Decisional Participant"**).

The Community IRP Initiation Process shall thereafter continue for such Community IRP Supported Petition pursuant to Section 4.2(c) of this Annex D.

(ii) The Community IRP Initiation Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Petition Support Period, deliver to the Secretary a notice certifying that the Community IRP Initiation Process has been terminated with respect to the Community IRP included in the Community IRP Petition (**"Community IRP Termination Notice"**) if:

(A) no Community IRP Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Community IRP Petition during the Community IRP Petition Support Period;

(B) where the Community IRP Supported Petition includes a PDP Fundamental Bylaw Statement, the Fundamental Bylaw Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(C)where the Community IRP Supported Petition includes a PDP Articles Statement, the Articles Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(D)where the Community IRP Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants; or

(E) where the Community IRP Supported Petition includes a CCWG Policy Recommendation Statement, the CCWG Policy Recommendation Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants.

(c) If the EC Administration receives a Community IRP Supported Petition under Section 4.2(b) of this Annex D during the Community IRP Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community IRP Supported Petition (**"Community IRP Community Forum"**).

(i) If a publicly-available conference call has been requested in a Community IRP Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Community IRP Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

(ii) The Community IRP Community Forum shall be convened and concluded during the period beginning on the expiration of the Community IRP Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community IRP Petition Support Period ("**Community IRP Community Forum Period**") unless the Community IRP Supported Petition requested that the Community IRP Community Forum be held during the next scheduled ICANN public meeting, in which case the Community IRP Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s). If the Community IRP Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community IRP Petition Support Period, the Community IRP Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Community IRP Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects and/or, only if the Community IRP Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Community IRP Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Community IRP Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Community IRP Community Forum in a fair and neutral manner.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Community IRP Supported Petition prior to the convening of and during the Community IRP Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and Directors representing the Board are expected to attend the Community IRP Community Forum in order to discuss the Community IRP Supported Petition.

(vii) If the Community IRP Petitioning Decisional Participant and each of the

> Community IRP Supporting Decisional Participants for the Community IRP Supported Petition agree before, during or after a Community IRP Community Forum that the issue raised in such Community IRP Supported Petition has been resolved, such Community IRP Supported Petition shall be deemed withdrawn and the Community IRP Initiation Process with respect to such Community IRP Supported Petition will be terminated. If a Community IRP Initiation Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community IRP Supported Petition, deliver to the Secretary a Community IRP Termination Notice. For the avoidance of doubt, the Community IRP Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s).
>
> (viii) During the Community IRP Community Forum Period, an additional one or two Community IRP Community Forums may be held at the discretion of a Community IRP Petitioning Decisional Participant and a related Community IRP Supporting Decisional Participant, or the EC Administration.
>
> (ix) ICANN will provide support services for the Community IRP Community Forum and shall promptly post on the Website a public record of the Community IRP Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Community IRP Community Forum.

(d) Following the expiration of the Community IRP Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Community IRP Community Forum Period (such period, the "**Community IRP Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Community IRP Supported Petition, (ii) objects to such Community IRP Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community IRP Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Community IRP Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Community IRP Decision Period).

(e) The EC Administration, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, shall promptly deliver a written notice ("**EC Community IRP Initiation Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.2 of this Annex D, the EC has resolved to accept the Community IRP Supported Petition if:

> (i) A Community IRP Supported Petition that does not include a PDP Fundamental Bylaw Statement, a PDP Articles Statement, a PDP Standard Bylaw Statement or a CCWG Policy Recommendation Statement (A) is supported by three or more Decisional Participants, and (B) is not objected to by

> more than one Decisional Participant;
>
> (ii) A Community IRP Supported Petition that (A) includes a PDP Fundamental Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant;
>
> (iii) A Community IRP Supported Petition that (A) includes a PDP Articles Statement, (B) is supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant;
>
> (iv) A Community IRP Supported Petition that (A) includes a PDP Standard Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant; or
>
> (v) A Community IRP Supported Petition that (A) includes a CCWG Policy Recommendation Statement, (B) is supported by three or more Decisional Participants (including the CCWG Policy Recommendation Decisional Participant), and (C) is not objected to by more than one Decisional Participant.

(f) If the Community IRP Supported Petition does not obtain the support required by Section 4.2(e) of this Annex D, the Community IRP Initiation Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, deliver to the Secretary a Community IRP Termination Notice.

(g) ICANN shall promptly post to the Website any (i) Community IRP Petition, (ii) Community IRP Supported Petition, (iii) EC Community IRP Initiation Notice, (iv) Community IRP Termination Notice, (v) written explanation provided by the EC Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.2.

Section 4.3. COMMUNITY RECONSIDERATION REQUEST

(a) Any Decisional Participant may request that the EC initiate a Reconsideration Request (a "**Community Reconsideration Petitioning Decisional Participant**"), as contemplated by Section 4.2(b) of the Bylaws, by delivering a notice to the EC Administration and the other Decisional Participants, with a copy to the Secretary for ICANN to promptly post on the Website, requesting the review or reconsideration of an action or inaction of the ICANN Board or staff ("**Community Reconsideration Petition**"). A Community Reconsideration Petition must be delivered within 30 days after the occurrence of any of the conditions set forth in Section 4.2(g)(i)(A), (B) or (C) of the Bylaws. In that instance, the Community Reconsideration Petition must be delivered within 30 days from the initial posting of the rationale. The process set forth in this Section 4.3 of this Annex D as it relates to a particular Community Reconsideration Petition is referred to herein as the "**Community Reconsideration Initiation Process**."

(b) Following the delivery of a Community Reconsideration Petition to the EC

Administration by a Community Reconsideration Petitioning Decisional Participant pursuant to Section 4.3(a) of this Annex D (which delivery date shall be referred to herein as the "**Community Reconsideration Notification Date**"), the Community Reconsideration Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community Reconsideration Petition. The Community Reconsideration Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Community Reconsideration Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community Reconsideration Supporting Decisional Participant**") during the period beginning on the Community Reconsideration Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the Community Reconsideration Notification Date (the "**Community Reconsideration Petition Support Period**"), the Community Reconsideration Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Community Reconsideration Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community Reconsideration Supporting Decisional Participant. Each Community Reconsideration Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community Reconsideration Petition. Such Community Reconsideration Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community Reconsideration Petitioning Decisional Participant who shall act as a liaison with respect to the Community Reconsideration Supported Petition;

(C) a statement as to whether or not the Community Reconsideration Petitioning Decisional Participant and/or the Community Reconsideration Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Community Reconsideration Community Forum (as defined in Section 4.3(c) of this Annex D) for the community to discuss the Community Reconsideration Supported Petition; and

(D) a statement as to whether the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant have determined to hold the Community Reconsideration Community Forum during the next scheduled ICANN public meeting.

The Community Reconsideration Initiation Process shall thereafter continue for such Community Reconsideration Supported Petition pursuant to Section 4.3(c) of this Annex D.

(ii) The Community Reconsideration Initiation Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the

expiration of the Community Reconsideration Petition Support Period, deliver to the Secretary a notice certifying that the Community Reconsideration Initiation Process has been terminated with respect to the Reconsideration Request included in the Community Reconsideration Petition ("**Community Reconsideration Termination Notice**") if the Community Reconsideration Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Community Reconsideration Petition during the Community Reconsideration Petition Support Period.

(c) If the EC Administration receives a Community Reconsideration Supported Petition under Section 4.3(b) of this Annex D during the Community Reconsideration Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community Reconsideration Supported Petition ("**Community Reconsideration Community Forum**").

(i) If a publicly-available conference call has been requested in a Community Reconsideration Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Community Reconsideration Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

(ii) The Community Reconsideration Community Forum shall be convened and concluded during the period beginning on the expiration of the Community Reconsideration Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period ("**Community Reconsideration Forum Period**") unless the Community Reconsideration Supported Petition requested that the Community Reconsideration Community Forum be held during the next scheduled ICANN public meeting, in which case the Community Reconsideration Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s). If the Community Reconsideration Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period, the Community Reconsideration Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Community Reconsideration Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects and/or, only if the Community Reconsideration Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Community Reconsideration Community Forum will not be held during an ICANN public

meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Community Reconsideration Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Community Reconsideration Community Forum in a fair and neutral manner.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Community Reconsideration Supported Petition prior to the convening of and during the Community Reconsideration Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and Directors representing the Board are expected to attend the Community Reconsideration Community Forum in order to discuss the Community Reconsideration Supported Petition.

(vii) If the Community Reconsideration Petitioning Decisional Participant and each of the Community Reconsideration Supporting Decisional Participants for a Community Reconsideration Supported Petition agree before, during or after the Community Reconsideration Community Forum that the issue raised in such Community Reconsideration Supported Petition has been resolved, such Community Reconsideration Supported Petition shall be deemed withdrawn and the Community Reconsideration Initiation Process with respect to such Community Reconsideration Supported Petition will be terminated. If a Community Reconsideration Initiation Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community Reconsideration Supported Petition, deliver to the Secretary a Community Reconsideration Termination Notice. For the avoidance of doubt, the Community Reconsideration Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s).

(viii) During the Community Reconsideration Community Forum Period, an additional one or two Community Reconsideration Community Forums may be held at the discretion of a Community Reconsideration Petitioning Decisional Participant and a related Community Reconsideration Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Community Reconsideration Community Forum and shall promptly post on the Website a public record of the Community Reconsideration Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Community Reconsideration Community Forum.

(d) Following the expiration of the Community Reconsideration Community Forum

Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Community Reconsideration Community Forum Period (such period, the "**Community Reconsideration Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Community Reconsideration Supported Petition, (ii) objects to such Community Reconsideration Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community Reconsideration Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Community Reconsideration Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Community Reconsideration Decision Period).

(e) If (i) three or more Decisional Participants support the Community Reconsideration Supported Petition and (ii) no more than one Decisional Participant objects to the Community Reconsideration Supported Petition, then the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver a notice to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.3 of this Annex D, the EC has resolved to accept the Community Reconsideration Supported Petition ("**EC Reconsideration Initiation Notice**"). The Reconsideration Request shall then proceed in accordance with Section 4.2 of the Bylaws.

(f) If the Community Reconsideration Supported Petition does not obtain the support required by Section 4.3(e) of this Annex D, the Community Reconsideration Initiation Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver to the Secretary a Community Reconsideration Termination Notice.

(g) ICANN shall promptly post to the Website any (i) Community Reconsideration Petition, (ii) Community Reconsideration Supported Petition, (iii) EC Reconsideration Initiation Notice, (iv) Community Reconsideration Termination Notice, (v) written explanation provided by the EC Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.3.

Annex E: Caretaker ICANN Budget Principles

1. Principles

The caretaker ICANN budget (the "**Caretaker ICANN Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN Budget Principles**"):

a. It is based on then-current ICANN operations;

b. It allows ICANN to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN Budget by the EC pursuant to the Bylaws;

c. It allows ICANN to react to emergency situations in a fashion that preserves the continuation of its operations;

d. It allows ICANN to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

e. It enables ICANN to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN Budget is rejected by the EC pursuant to the Bylaws and when an ICANN Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and

f. Notwithstanding any other principle listed above, it prevents ICANN from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN Budget that was rejected by the EC that triggered the need for the Caretaker ICANN Budget.

1. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically include:

i. the functioning of the EC, the Decisional Participants, and any Supporting Organizations or Advisory Committees that are not Decisional Participants;

ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;

iii. employment of staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

iv. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) in the normal course of business;

v. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

vi. operating all existing ICANN offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

vii. contracting with vendors as needed in the normal course of business;

viii. conducting ICANN meetings and ICANN intercessional meetings previously contemplated; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN Budget Principles;

iii. entering into new agreements in relation to opening or operating new ICANN locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.

Annex F: Caretaker IANA Budget Principles

1. Principles

The caretaker IANA Budget (the "**Caretaker IANA Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker IANA Budget Principles**"):

a. It is based on then-current operations of the IANA functions;

b. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA Budget by the EC pursuant to the Bylaws;

c. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to react to emergency situations in a fashion that preserves the continuation of its operations;

d. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

e. It allows ICANN, in its responsibility to fund the operations of the IANA

functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA Budget is rejected by the EC pursuant to the Bylaws and when an IANA Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise need to be restarted at an incremental cost; and

f. Notwithstanding any other principle listed above, it prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA Budget that was rejected by the EC that triggered the need for the Caretaker IANA Budget.

1. Examples

a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically include:

i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) in the normal course of business;

iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN's Customer Standing Committee or the customers of the IANA functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN or its affiliates is a party that relate to the IANA functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA Budget Principles;

iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker IANA Budget.

ANNEX G-1

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registrars are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS;
- functional and performance specifications for the provision of registrar services;
- registrar policies reasonably necessary to implement Consensus Policies relating to a gTLD registry;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or
- restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);

- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD by a registrar losing accreditation; and
- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

ANNEX G-2

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registries are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS;
- functional and performance specifications for the provision of registry services;
- security and stability of the registry database for a TLD;
- registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the

technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

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[1] When "1 October 2016" is used, that signals that the date that will be used is the effective date of the Bylaws.

Ex. R-27

RESPONDENT'S EXHIBIT

9 November 2021

Manal Ismail
Chair, Governmental Advisory Committee (GAC)

Dear Manal,

I am writing with respect to the Board's recent resolution, Resolution 2021.09.12.08, relating to the .GCC application and the Governmental Advisory Committee (GAC) consensus advice provided in the Beijing Communiqué in April 2013 that the .GCC application "should not proceed."

As you may be aware, there is a currently pending Independent Review Process proceeding that was initiated by GCCIX, W.L.L. (the applicant for .GCC), challenging, among other things, ICANN's acceptance of the GAC consensus advice in the April 2013 Beijing Communiqué that the .GCC application should not proceed.

As noted in the Board resolution and rationale, after careful consideration of various factors, "the Board concluded that, before proceeding further with the .GCC [Independent Review Process], it could be beneficial to ask the GAC for any new or additional information that the GAC might choose to offer regarding its advice that the .GCC application should not proceed."

The Board, therefore, "authorize[d] the President and CEO, or his designee(s), to seek a stay of the .GCC [Independent Review Process] and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application."

In light of the foregoing, we are reaching out to the GAC in order to open this informal dialogue, to seek input from the GAC regarding how it would like to engage with ICANN org in this dialogue, and to determine whether the GAC would prefer to receive any additional information from ICANN org in advance of such a dialogue.

Given the pending Independent Review Process, we would appreciate an initial response from the GAC as soon as you think is practicable, with the goal of receiving the GAC's substantive input, if any, before the Internet Governance Forum in early December.

Yours sincerely,

Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)

Cc: Maarten Botterman
Chair, ICANN Board of Directors

Ex. R-28

RESPONDENT'S EXHIBIT

ICANN | GAC

Governmental Advisory Committee

25 January 2022

Göran Marby
President and CEO, ICANN

Cc: Maarten Botterman
Chairman, ICANN Board

Subject: GAC Response to ICANN CEO letter on .GCC Application

Dear Göran,

Pursuant to your letter (9 November 2021) regarding the .GCC application, the GAC acknowledged the Board's resolution to seek additional information from the GAC relative to advice contained in the April 2013 Beijing Communiqué.

The GAC has discussed sharing additional information regarding its consensus advice that the .GCC application "should not proceed", noting, however, that at the time of the Beijing Communiqué in 2013 it was not required for the GAC to include a rationale for GAC consensus advice to the ICANN Board.

The GAC has nevertheless agreed to share further factual information with ICANN org, after reviewing GAC discussions from 2013 held in closed sessions at ICANN46 in Beijing on the .GCC application, which helped inform the language included in the Beijing Communiqué consensus advice text.

In November 2012, in accordance with section 1.1.2.4 of the Applicant Guidebook, the governments of Bahrain, Oman, Qatar and UAE issued a GAC Early Warning to the Applicant expressing serious concerns against the application.

In February 2013, the GAC received requests from several GAC members (Bahrain, Oman, Qatar and UAE) as well as the Gulf Cooperation Council (GCC) to include ".GCC" in a GAC Objection

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Governmental Advisory Committee

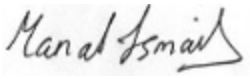
Advice that the application should not proceed for the reasons highlighted in the GAC Early Warning.

Accordingly, the GAC, during ICANN46 Beijing (April 2013) deliberated and reached consensus on "GAC Objection Advice" and advised the ICANN Board that the application **should not proceed** in accordance with Module 3.1 part I of the Applicant Guidebook for the reasons expressed by the concerned GAC members as follows:

- The applied-for string (GCC) is an exact match of the known acronym for an Intergovernmental Organization (IGO), the Gulf Cooperation Council and as such, warrants special protection to its name and acronym.
- The application clearly targeted the GCC community without any support from the GCC, its six members or its community.

I am hopeful that this information will prove useful for the Independent Review Process (IRP) currently underway.

Best regards,



Manal Ismail
Chair, Governmental Advisory Committee (GAC)
ICANN

Ex. R-29

RESPONDENT'S EXHIBIT

Board Activities and Meetings

View records of actions and decisions made by the ICANN Board from recent activities and meetings.

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Approved Board Resolutions | Regular Meeting of the ICANN Board 12 June 2022

1. Consent Agenda: (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1)
    a. ICANN Purchase of IMRS Servers (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.a)
        Rationale for Resolutions 2022.06.12.01 – 2022.06.12.02 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.a.rationale)
    b. Outsource Contract Renewal for the Information Transparency Initiative (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.b)
        Rationale for Resolutions 2022.06.12.03 – 2022.06.12.04 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.b.rationale)
    c. Contract for Subsequent Procedures Communications Support (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.c)
        Rationale for Resolutions 2022.06.12.05 – 2022.06.12.06 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.c.rationale)
    d. ICANN78 Venue Contracting (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.d)
        Rationale for Resolutions 2022.06.12.07 – 2022.06.12.08 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#1.d.rationale)
2. Main Agenda: (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2)

a. Washington, D.C. New Office Lease (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.a)

Rationale for Resolutions 2022.06.12.09 – 2022.06.12.10 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.a.rationale)

b. Deferral of Organizational Reviews (ALAC/At-Large, ccNSO, ASO, NomCom, RSSAC, and SSAC) (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.b)

Rationale for Resolutions 2022.06.12.11 – 2022.06.12.12 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.b.rationale)

c. Consideration of the Final Report of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) (ICANN Grant Giving Program) (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.c)

Rationale for Resolutions 2022.06.12.13 – 2022.06.12.16 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.c.rationale)

d. Transfer of the .BY top-level domain and the .бел ("bel") top-level domain representing Belarus to Limited Liability Company Belarusian Cloud Technologies (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.d)

Rationale for Resolution 2022.06.12.17 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.d.rationale)

e. Update on Independent Review Process re: Application of .GCC (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.e)

Rationale for Resolution 2022.06.12.18 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.e.rationale)

1. **Consent Agenda:**

a. **ICANN Purchase of IMRS Servers**

Whereas, ICANN's mission is focused on preserving the stability and stability of the Internet.

Whereas, the party that has bid on providing servers for the four anticipated ICANN Managed Root Server (IMRS) clusters has provided ICANN organization with services in hardware and shipping management over the last three years.

Resolved (2022.06.12.01), the Board authorizes the President and CEO, or his designee(s), to enter into, and make disbursement in furtherance of, a contract to procure servers for all four proposed IMRS cluster locations.

Resolved (2022.06.12.02), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2022.06.12.01 – 2022.06.12.02

In order to provide supplemental support and maintain vendor competition, ICANN org held a Request for Quotation (RFQ) to select the current firm. The firm procured a discount of 50-58% on the servers. The value of the contract is estimated to be around US [Redacted: Confidential Negotiation Information]. ICANN org has previously partnered with this firm to purchase servers for the Singapore ICANN Managed Root Server (IMRS) cluster. The relationship with this firm has been beneficial to ICANN org as it has provided consolidated shipping and handling services in addition to its discounted rates on hardware.

This decision is in the furtherance of ICANN's mission and the support of public interest to support the security, stability, and resiliency of the domain name system by ensuring that IMRS servers were sourced in a fiscally responsible and accountable

manner.

This decision will have a fiscal impact, but the impact has already been accounted for in the FY22 SSR budget.

As noted above, this action is intended to have a positive impact on the security, stability, and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

b. **Outsource Contract Renewal for the Information Transparency Initiative**

Whereas, ICANN organization has a need for continued third-party development, quality assurance and content management support to augment its capacity.

Whereas, the current firm has provided services in software engineering, quality assurance, and content management to the Information Transparency Initiative (ITI) project since its inception.

Whereas, ICANN org conducted a full request for proposal (RFP) in 2017 for the initial third-party support services for the ITI project.

Whereas, ICANN org considered the cost and efficiency of either issuing another RFP for additional outsourced IT capacity for the ITI project, or further renewing the contract with the current firm and determined that it was more efficient and cost effective to renew the contract with the current firm.

Resolved (2022.06.12.03), the Board authorizes the President and CEO, or his designee(s), to enter into, and make disbursement in furtherance of, a further renewed contract with [Redacted: Confidential Negotiation Information], the current outsourcing firm for a term of [Redacted: Confidential Negotiation Information].

Resolved (2022.06.12.04), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2022.06.12.03 – 2022.06.12.04

The Information Transparency Initiative (ITI) is one of the largest initiatives the ICANN organization has undertaken. Although viewed as a single project, in actuality, it is both a large technological platform program and an ongoing operational activity with several mega projects – the configuration of a Document Management System (DMS) and Content Management System (CMS), the integration of those systems, the implementation of a content delivery network (CDN) for faster content access globally, engineering a publishing pipeline to transport content from a desktop to the applicable website, authoring a multi-language translation service, and a taxonomy service to tag content for easy storage and retrieval.

On 23 September 2017, ITI was approved by the ICANN Board via Resolution (/resources/board-material/resolutions-2017-09-23-en#2.c). It included several objectives:

1. Create an integrated, ongoing, operational process to govern, preserve, organize, and secure ICANN's public content.
2. Build a foundation of content governance through consistent multilingual tagging, a functional information architecture, and enforced workflows.
3. Implement this governance through a new document management system (DMS), the content foundation for ICANN ecosystem-wide governance.
4. Deploy new workflows and processes to ensure consistent, multilingual taxonomy for greater content findability and multifaceted search capabilities.
5. Surface the improved multilingual content and search to the community through a new content management system (CMS), which will serve as the backbone for ICANN's external web properties.
6. Establish a future-proof and content-agnostic technology landscape.
7. Upgrade our technical infrastructure, and thereby serve our global community better through increased findability and accessibility of multilingual content.

Since that time, many significant deliverables have been completed:

1. All content on https://icann.org (/) (over 65,000 pieces of content) has been audited, classified, and tagged to allow improved search, content governance, and the transformation of unstructured content into structured content.

2. A controlled taxonomy has been created that will serve ICANN's entire ecosystem of sites.
3. A comprehensive 138-page Web Style Guide outlines the structure and behavior of all pages, components, and features on https://icann.org (/). This allows ICANN org to use a predetermined menu of templates and components to quickly create new pages and sites.
4. Over 80 percent of the frontend requirements (/iti)-gathering documentation, wireframing, and basic implementation is complete (significant work on content authoring and migration remains).
5. For the first time, https://icann.org (/) has a true multilingual interface in the six U.N. languages.

ICANN org continues to have a need for a third-party provider to help deliver committed features and functions for ITI as planned. The current firm providing these services has worked with the ICANN org team since the project was initiated and has been critical to the project development and delivery process.

After several years with no rate increase, the current firm has proposed updated terms and fees, which ICANN org has negotiated.

The benefits of outsourcing this work to the current firm include:

1. Team flexibility - as the project matures the team needs to evolve, the necessary skills sets may change, and specific developments may need more or less people.
2. Available resources - large number of deliverables committed with limited staff.

The target milestones to be delivered during the term of the renewed contract renewal for these third-party support services on ITI include: (i) Board Materials; (ii) Beginners Pages; (iii) Help Pages; (iv) Events Calendar: (v) Press Releases; (vi) CEO Corner; (vii) RSSAC Content: (viii) SSAC Content: (ix) Community Pages; (x) Permissions; (xi) Taxonomy Service; (xii) Public Comment; (xiii) Announcements; (xiv) Blogs Authoring; (xv) Google Analytics Replacement; (xvi) Accessibility Refinements; and (xvii) Data Protection Pages.

Additional ITI milestones and deliverables are planned beyond the next 12 months and will be part of the planning cycle as ICANN org progresses through the fiscal year.

This decision will have a fiscal impact, but the impact has already been accounted for in the FY23 budget and will be for future budgets as well.

This action is intended to have a positive impact on the security, stability, and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

c. **Contract for Subsequent Procedures Communications Support**

Whereas, ICANN organization has a need to conduct an awareness campaign in support of ICANN's proposed upcoming expansion of generic top-level domains.

Whereas, ICANN org conducted a full request for proposal to select an established provider with a global footprint; extensive expertise in media relations and planning, campaign development, messaging strategy, event outreach and support; and proven success across target audiences, media, and geographies.

Whereas, ICANN org has selected an outsource agency to develop and execute this campaign, the contract is segmented into three phases:

1. Phase 1 Campaign Planning – development of campaign-wide narrative, messaging, content and assets, and the adaptation of these global elements to campaigns selected for rollout. Identification of target industries and geographies.
2. Phase 2 Campaign Execution and Rollout Planning – initiate awareness campaign and partner with ICANN org to develop the full communications and outreach campaign for the SubPro launch.
3. Phase 3 Geographic Targeting – audience-specific three-month awareness campaigns to create initial awareness of the upcoming gTLD application round.

Whereas, the agency has provided a low, medium, and high estimate of campaign fees, based on the number of countries and industries (instances) included, the contract will be limited to a 50-instance campaign at a cost of no more than [Redacted: Confidential Negotiation Information]over the term of the contract.

Resolved (2022.06.12.05), the Board authorizes the President and CEO, or his designee(s), to enter into, and make disbursement in furtherance of, a contract with the agency for a term of [Redacted: Confidential Negotiation Information].

Resolved (2022.06.12.06), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2022.06.12.05 – 2022.06.12.06

ICANN organization is working toward a next round of generic top-level domains (gTLDs) through a new application window. This will include a multi-year communications approach.

Recommendation 13.2, 13.3-7 of the Final Report (https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-20jan21-en.pdf) on the new gTLD Subsequent Procedures Policy Development Process states that the New gTLD Program's communications plan "should serve the goals of raising awareness about the New gTLD Program to as many potential applicants as possible around the world and making sure that potential applicants know about the program in time to apply. To serve this objective, the Working Group determined that the focus should be on timeliness, broad outreach, and accessibility."

ICANN org, with the guidance of the community, is working to support an inclusive and multilingual Internet that will enable people to navigate the Internet in their own language and using their own keyboard. This enables the formation of truly local online communities, where individuals can interact online using their own scripts, languages, and cultures.

For many years the ICANN community, and volunteers around the world have been working together to internationalize the Domain Name System (DNS). One of the issues that ICANN, including community volunteers and industry-leading software and email service providers are working to resolve is ensuring the Universal Acceptance (UA) of all domain names and email addresses in all Internet-enabled devices and applications. This requires back-end providers to upgrade their systems and services to ensure they will work in the continuously expanding and evolving DNS.

Adoption of UA has been slow, but it is necessary to achieve the goal of true local access and global interoperability.

Recommendation 13.2, 13.3-7 of the Final Report (https://gnso.icann.org/sites/default/files/file/field-file-attach/final-report-newgtld-subsequent-procedures-pdp-20jan21-en.pdf) on the new gTLD Subsequent Procedures Policy Development Process states that the New gTLD Program's communications plan "should serve the goals of raising awareness about the New gTLD Program to as many potential applicants as possible around the world and making sure that potential applicants know about the program in time to apply. To serve this objective, the Working Group determined that the focus should be on timeliness, broad outreach, and accessibility."

In August 2021, ICANN org launched a request for proposal (RFP) seeking a Public Relations/Strategic Communications agency to augment ICANN's Global Communications team in conducting an awareness campaign in support of ICANN's proposed upcoming expansion of gTLDs. The campaign includes two immediate objectives:

- To raise awareness that nearly half of the world's population is unable to access the Internet in their own script, using their own keyboard. There is also a need to continue to share factual information and heighten awareness of the lack of diversity on the Internet and the language barrier in the countries and regions where it is anticipated that many of the next billion users will come from: Africa, Asia, and Latin America.
- Support the ICANN community's ongoing efforts to encourage software developers and back-end providers to adopt Universal Acceptance, and to create further awareness and educate software developers and email providers of the need to upgrade their systems and services to ensure they will work in the continuously expanding and evolving domain name space

ICANN org is now seeking approval to contract through [Redacted: Confidential Negotiation Information] for a total cost not to exceed [Redacted: Confidential Negotiation Information]. Because the contract is for more than US$500,000, under

ICANN's Contracting and Disbursement Policy the Board is required to approve entering into the contract.

Accordingly, ICANN org and the BFC recommended that the Board authorize the org to enter into, and make disbursement in furtherance of, a contract covering the period [Redacted: Confidential Negotiation Information],with a total cost not to exceed [Redacted: Confidential Negotiation Information]to augment ICANN's Global Communications team in conducting an awareness campaign in support of ICANN's proposed upcoming expansion of gTLDs.

This decision is in the furtherance of ICANN's mission and the support of public interest to support the security, stability, and resiliency of the domain name system by ensuring that there is a fully resourced Engineering and IT team able to support the organization in a fiscally responsible and accountable manner.

This decision will have a fiscal impact, but the impact has already been accounted for in the FY23 budget and will be for future budgets as well.

As noted above, this action is intended to have a positive impact on the next round of new gTLD applications, and further application rounds.

This is an Organizational Administrative Function that does not require public comment.

d. **ICANN78 Venue Contracting**

Whereas, ICANN intends to hold its third Public Meeting of 2023 in the Europe region.

Whereas, selection of this Hamburg, Germany location adheres to the geographic rotation guidelines established in the Meeting Strategy Working Group.

Whereas, ICANN org has completed a thorough review of the venue and finds the one in Hamburg, Germany to be the most suitable.

Resolved (2022.06.12.07), the Board authorizes the President and CEO, or his designee(s), to engage in and facilitate all necessary contracting and disbursements for the host venue and hotel for the October 2023 ICANN Public Meeting in Hamburg, Germany, in an amount not to exceed [Redacted: Confidential Negotiation Information].

Resolved (2022.06.12.08), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2022.06.12.07 – 2022.06.12.08

As part of ICANN's Public Meeting strategy, ICANN seeks to host a meeting in a different geographic region (as defined in the ICANN Bylaws) three times a year. ICANN78 is scheduled for 21-26 October 2023. Following the change of the ICANN69 meeting in Hamburg, Germany to a virtual meeting, ICANN rescheduled with the venue and arranged to hold the ICANN78 meeting in Hamburg.

ICANN org previously confirmed that the Hamburg, Germany meeting location meets the Meeting Location Selection Criteria. Selection of this Europe location adheres to the geographic rotation guidelines established in the Meeting Strategy Working Group. ICANN org did not conduct a broader search for other available locations for this meeting due to the already confirmed suitability of the venue.

The Board Finance Committee (BFC) has carried out its standard due diligence in reviewing the proposed board decision to recommend approval to the Board. As part of this diligence, the BFC has reviewed the financial risks associated with the proposed decision and the information provided by the org on the measures in place to mitigate those risks. The BFC has found these financial risks and the mitigation in place reasonable and acceptable.

The Board reviewed the org's briefing for hosting the meeting in Hamburg, Germany, and the determination that the proposal met the significant factors of the Meeting Location Selection Criteria, as well as the related costs for the facilities selected, for the October 2023 ICANN Public Meeting. ICANN conducts Public Meetings in support of its mission to ensure the stable and secure operation of the Internet's unique identifier systems, and acts in the public interest by providing free and open access to anyone wishing to participate, either in person or remotely, in open, transparent, and bottom-up, multistakeholder policy development processes.

There will be a financial impact on ICANN in hosting the meeting and providing travel support as necessary, as well as on the community in incurring costs to travel to the meeting. But such impact would be faced regardless of the location and venue of the meeting. This action will have no impact on the security or the stability of the DNS.

This is an Organizational Administrative function that does not require public comment.

2. **Main Agenda:**

a. **Washington, D.C. New Office Lease**

Whereas, ICANN's Washington, D.C., office lease is expiring in January 2023, and ICANN organization recommends relocating to a new, larger, and more centrally located location.

Whereas, the Board Finance Committee (BFC) has reviewed the financial implications of the lease and has recommended approval.

Whereas, both ICANN org and the BFC have recommended that the Board authorize the President and CEO, or his designee(s), to take all actions necessary to execute a new 12-year (144 month)lease for ICANN's new Washington, D.C., office location, and to make all necessary disbursements pursuant to the lease.

Resolved (2022.06.12.09) the Board authorizes the President and CEO, or his designee(s), to take all necessary actions to execute a new 12-year lease for ICANN's new Washington, D.C., office location, and to make all necessary disbursements pursuant to the lease.

Resolved (2022.06.12.10), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2022.06.12.09 – 2022.06.12.10

ICANN organization believes face to face interaction, including that which occurs at its engagement offices, is essential to carry out its work and mission. Although the org has been effectively operating remotely during the pandemic, the goal is to return to offices to support staff and community collaboration at ICANN's physical office locations.

In 2013, ICANN entered into a 10-year lease for 7,956 square feet of office space on the third floor of a Class A building in Washington, D.C. After assessing the Washington, D.C. real estate market and negotiating for a new lease, ICANN org recommends moving to a new building, with a 12-year lease for 8,337 square feet of office space in a Class A building in Washington, D.C., at the end of the current lease.

In early 2021, ICANN org began evaluating office space options in anticipation of the expiration of the current lease. While evaluating properties, ICANN org considered the following criteria:

- Cost effectiveness
- Disruption to staff
- Building Amenities
- Public Transportation
- Hotel Accommodations
- Safety and Security
- Conference Center Availability
- Below Market Rent
- Landlord Concessions
- Well Building - Health & Safety

In early 2022, ICANN org evaluated all the parameters affecting the decision to stay at the current Washington, D.C., office or move to another location. The evaluation included consideration of the real estate market conditions, as well as the current and anticipated workload of the organization including multiple large complex, and new projects and activities that will have a significant impact on the org overall, reshaping several teams specifically.

After thorough evaluations of the real estate market for suitable office space, such as the current space in Washington, D.C., and consideration of many options, ICANN org began negotiating lease terms with a new landlord. Pricing did not drop as much as other areas across the United States because of the pandemic. Given the current outlook of the pandemic and much of Washington, D.C., reopening, market activity and rental rates have been steadily increasing. Because negotiations started during the pandemic, ICANN org is in a favorable bargaining position with a new landlord.

After extensive negotiating, the proposal for the current location was a 13-year lease with average annual costs of [Redacted: Confidential Negotiation Information]for the current 7,956 square feet of office space. The proposal for the new location is a 12-year lease with average annual costs of [Redacted: Confidential Negotiation Information]for 8,337 square feet including access to a large conference room.

Moving to the new location will provide the ability to host ICANN org and community meetings, in addition to the location's proximity to airports, hotels, amenities, public transportation, and freeways. The new lease is cheaper in square footage compared to a new lease at the current location and requires one fewer year of lease commitment. In addition, the new location would avoid traffic and street closure issues of the existing office due to the latter's proximity to the White House.

The Board Finance Committee has reviewed the financial implications of the lease and agrees with ICANN org's recommendation to execute the new lease.

Executing the new office lease is in the public interest as it maintains ICANN's presence in Washington, D.C., which will allow ICANN org to continue to carry out ICANN's mission without disruption while maintaining collaboration with community stakeholders and the general public.

There will be a fiscal impact in average costs per month compared to the final year of the current lease. However, this increase is reasonable given the current real estate market and ICANN org will be able to absorb the cost increase.

Taking this decision will have no anticipated impact to the security, stability, and resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

b. **Deferral of Organizational Reviews (ALAC/At-Large, ccNSO, ASO, NomCom, RSSAC, and SSAC)**

Whereas, under ICANN Bylaws Section 4.4 (a) (/resources/pages/governance/bylaws-en/#article4.4), periodic reviews of ICANN structures shall be conducted no less frequently than every five years, based on feasibility as determined by the Board, and in recognition of the ASO Memorandum of Understanding (MOU) with ICANN (https://aso.icann.org/wp-content/uploads/2019/11/ASO-MoU-Executed-Nov-7-2019.pdf), which states with reference to the provisions of ICANN Bylaws Section 4.4, the Number Resource Organization (NRO) shall provide its own review mechanisms.

Whereas, under the provisions of ICANN's Bylaws Section 4.4 the next round of reviews is due to commence for the Address Supporting Organization (ASO)[1] (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#foot1) in July 2022, ALAC/At-Large in June 2023, Nominating Committee in June 2023, Root Server System Advisory Committee (RSSAC) in July 2023, Security and Stability Advisory Committee (SSAC) in February 2024, Country Code Names Supporting Organization (ccNSO) in November 2026, five years after the Board's receipt and action on the respective final reports (https://community.icann.org/category/accountability) from the second cycle of Organizational Reviews.

Whereas, the third Accountability and Transparency Review Team (ATRT3) made recommendations that will have an impact on all future Organizational Reviews; and the ATRT3 recognized this impact in its transmittal letter to the ICANN Board Chair (/en/system/files/correspondence/kane-langdon-orr-to-botterman-01jun20-en.pdf). The letter suggested the Board implement a moratorium on launching new reviews until the ATRT3 recommendations establish continuous improvement programs and a new Holistic Review could be implemented.

Whereas, the Board approved (/resources/board-material/resolutions-2020-11-30-en#1.a) the ATRT3 recommendations, subject to prioritization, recognizing that the ICANN community and organization will need time to plan for, and execute, those recommendations once prioritized for implementation.

Whereas, the third Generic Names Supporting Organization (GNSO) Review was deferred (/resources/board-material/resolutions-2021-06-21-en#1.b) by the ICANN Board in June 2021, and the Board directed the ICANN org to develop a comprehensive plan for the next cycle of Organizational Reviews. ICANN org consulted with the ALAC/At-Large, ccNSO, ASO, NomCom, RSSAC, and SSAC on the possibility of deferring their next scheduled Organizational Reviews, and the community input received (/resources/pages/correspondence) indicated broad support for deferral, considering the need to plan for changes to the Organizational Review processes in light of ATRT3 recommendations, and in consideration of the community workload.

Whereas, on 17 May 2022, the Board Organizational Effectiveness Committee discussed and approved a recommendation to the Board to accept the comprehensive plan for the next cycle of Organizational Reviews, and defer the six other Organizational Reviews scheduled for the next review cycle, taking into account the support of each of the impacted groups, in alignment with that comprehensive plan.

Resolved (2022.06.12.11), the Board accepts the comprehensive plan developed for the timing and conduct of the next Organizational Review cycle. The Board directs ICANN's President and CEO, or his designee(s), to provide periodic updates to the Board on progress of the plan, including a report on the status of the deferral and continued need for deferral within three years of this resolution.

Resolved (2022.06.12.12), the Board is deferring the initiation of the next round of reviews of ALAC/At-Large, ASO, ccNSO, NomCom, RSSAC, and SSAC, with the support of each of the impacted groups, in alignment with the comprehensive plan for the next cycle of Organizational Reviews.

Rationale for Resolutions 2022.06.12.11 – 2022.06.12.12

Why is the Board addressing the issue?

ICANN organizes independent reviews of its SOACs (Organizational Reviews) as prescribed in Article 4 Section 4.4 (/resources/pages/governance/bylaws-en#IV-4) of the ICANN Bylaws, to ensure ICANN's multistakeholder model remains transparent and accountable, and to improve its performance. The Organizational Reviews currently run in five-year cycles. The ASO MOU with ICANN (https://aso.icann.org/wp-content/uploads/2019/11/ASO-MoU-Executed-Nov-7-2019.pdf) states with reference to the provisions of ICANN Bylaws Section 4.4, the NRO shall provide its own review mechanisms. The next ASO Review is due to commence in July 2022, ALAC/At-Large Review in June 2023, NomCom Review in June 2023, RSSAC Review in July 2023, SSAC Review in February 2024, and ccNSO Review in November 2026. Under the Bylaws, the Board has the ability to defer Organizational Reviews beyond the five-year cycle if conducting a review in that cycle is not feasible.

For the six upcoming Organizational Reviews in this next cycle, there is a dependency on, and an expected impact from, the implementation of ICANN Board-approved ATRT3 recommendations. Specifically, ATRT3 Recommendation 3 calls for evolving the current Organizational Reviews into continuous improvement programs for SOACs, and introduces a new Holistic Review to consider the effectiveness of the continuous improvement programs, accountability of SOACs, and their continuing purpose and structure.

In addition, there is a continued pressure on community volunteer time. Currently, various cross-community work efforts are underway, all of which consume considerable volunteer time. Deferring the Organizational Reviews will enable the broader ICANN community to understand the potential impact of the recommendations from the ATRT3 as their implementation timing and planning becomes clearer.

This Board action is a result of the Board's consideration of various factors including: consultation on Organizational Reviews timing, current community workload, as well as the upcoming implementation of ATRT3 recommendations. Based upon those considerations, the Board has concluded that it is not feasible to proceed with the six Organizational Reviews as scheduled. The Board will oversee the implementation of ATRT3 recommendations and determine whether the timing of Organizational Reviews should be re-examined based on the changing environment, as outlined in the comprehensive plan for the next cycle of Organizational Reviews.

What is the proposal being considered?

The proposal under consideration is to accept the comprehensive plan for the next cycle of Organizational Reviews, and defer the start of all Organizational Reviews scheduled within the upcoming Organizational Review cycle (the third reviews of the

ALAC/At-Large, ccNSO, ASO, NomCom, RSSAC, and SSAC) in alignment with the comprehensive plan, as follows:

1. Obtain confirmation from each SO/AC/NomCom on deferral of Organizational Reviews;
2. Run Pilot Holistic Review including Pilot Continuous Improvement Program, to the extent applicable;
3. Identify if any approved recommendations from the Pilot Holistic Review suggest changes to Organizational Reviews as specified in Bylaws;
    a. Initiate process to draft and amend Bylaws related to Organizational Reviews, in accordance with ATRT3 recommendations and any related approved recommendations from the Pilot Holistic Review.
4. Coordinate with community on initiation of new cycle of Organizational Reviews (or their replacement) in line with approved Pilot Holistic Review recommendations;
5. If it becomes apparent that Pilot Holistic Review will not issue recommendations impacting the Organizational Reviews as specified within Bylaws, coordinate with community on initiation of Organizational Reviews from deferred cycle;
6. If neither steps 4 nor 5 have yet occurred, ICANN org shall report on status of deferral and continued need for deferral within 3 years of this resolution.

Which stakeholders or others were consulted?

Each of the organizations (ALAC/At-Large (/en/system/files/correspondence/hilyard-to-swinehart-14apr22-en.pdf), ASO (/en/system/files/correspondence/wilson-to-swinehart-21apr22-en.pdf), ccNSO (/en/system/files/correspondence/reynoso-to-swinehart-21apr22-en.pdf), NomCom (/en/system/files/correspondence/graham-to-swinehart-13apr22-en.pdf), RSSAC (/en/system/files/correspondence/baker-to-swinehart-07apr22-en.pdf), and SSAC (/en/system/files/correspondence/rasmussen-to-swinehart-20apr22-en.pdf)) were consulted via ICANN Correspondence (/resources/pages/correspondence) on 6 April 2022, and all supported deferral.

What concerns, or issues were raised by the community?

No concerns or issues were raised by the community. All six Organizational Chairs indicated support of the deferral of their Organizational Review. Further, the communities indicated support of the deferral until such time that the impact of ATRT3 Recommendations pertaining to Organizational Reviews is better understood by the ICANN Board, community, and ICANN org, and in consideration of the community workload and the need to plan for changes to the Organizational Review processes.

What factors did the Board find to be significant?

The Board considered its prerogative to defer Organizational Reviews based on feasibility. The Board also considered the dependency on prioritization and implementation of the ATRT3 recommendations which will impact the Organizational Reviews cycle and the nature of these reviews in the future. The Board will oversee the implementation of ATRT3 recommendations and consider periodic updates on progress of the comprehensive plan for the next cycle of Organizational Reviews. The Board will consider a report on the status of the deferral and continued need for deferral within 3 years of this resolution and determine whether the timing of Organizational Reviews should be re-examined.

Additionally, the Board considered the precedents set by the deferrals of the third GNSO Review in 2021, the second GNSO Review in 2013, and the second ccNSO Review in 2017.

Are there positive or negative community impacts?

This Board action is expected to have a positive impact on the community by reducing the pressure on community volunteer time, considering the high volume of on-going community work efforts. In addition, the deferral will allow for the implications of ATRT3 recommendations to become clear. This will have a positive impact on the overall community work through planning and the evolution of the ICANN reviews to be more relevant and impactful.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The fiscal impacts on ICANN are positive in the sense that the budget set aside for the six Organizational Reviews will be used when deemed appropriate to result in an effective outcome to benefit the ALAC/At-Large, ASO, ccNSO, NomCom, RSSAC, and

SSAC, and the ICANN community in line with the intentions of the ATRT3. Conducting more comprehensive planning for the next Organizational Review cycle will have a positive impact on the overall planning and resourcing effort for ICANN as a whole.

Are there any security, stability or resiliency issues relating to the DNS?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS.

How is this action within ICANN's mission and what is the public interest served in this action?

The Board's action is consistent with ICANN's commitment pursuant to section 4.1 (/resources/pages/governance/bylaws-en/#article4) of the Bylaws to ensure ICANN's multistakeholder model remains transparent and accountable, and to improve the performance of its SOACs. This action will serve the public interest by fulfilling ICANN's commitment to maintaining and improving its accountability and transparency and by allowing the ICANN's Supporting Organizations and Advisory Committees to devote the proper resources to considering their accountability and ongoing purpose in the ICANN system.

Is public comment required prior to Board action?

No public comment is required.

c. **Consideration of the Final Report of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) (ICANN Grant Giving Program)**

Whereas, the 2012 New gTLD Program Applicant Guidebook specified that auctions operated by an ICANN-authorized provider could be used as a last resort to resolve string contention amongst applicants who applied for the same or similar string. The Applicant Guidebook required that "Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that directly supports ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status."

Whereas, to date, 16 auctions of last resort have taken place within the 2012 New gTLD Application Round, with approximately US$212 million in proceeds from those auctions maintained within a segregated fund and managed pursuant to an Auction Proceeds-specific investment policy (/resources/pages/investment-policy-new-gtld-2019-12-09-en).

Whereas, in 2015, the Generic Names Supporting Organization (GNSO) coordinated a community dialogue to give inputs to the ICANN Board on uses for the auction proceeds. This led to the 2016 formation of a cross-community team to draft a charter for the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP). Because of the significance of this effort, the ICANN Board maintained liaisons to this drafting effort, and stressed key areas of concern, (https://community.icann.org/display/NGAPDT/Background+Documents?preview=/58730906/58730908/Board%20Letter%20-%2011%20Feb%202016.pdf) such as monitoring of conflict of interest considerations, from very early in the process.

Whereas, the CCWG-AP (https://community.icann.org/display/CWGONGAP) was formally chartered (https://community.icann.org/display/CWGONGAP/CCWG+Charter) with approval from all of ICANN's Supporting Organizations and Advisory Committees (SO/ACs), and started work in 2017. The CCWG-AP was tasked with the development of proposals for a mechanism to distribute the proceeds, taking into account a set of guiding principles, including: transparency and openness; sufficient accountability and effective processes and procedures; and a fair, just, and unbiased distribution of the auction proceeds not inconsistent with ICANN's mission.

Whereas, the CCWG-AP met regularly, with participation from all ICANNSO/ACs. The CCWG-AP put an Initial Report (/en/public-comment/proceeding/initial-report-of-the-new-gtld-auction-proceeds-cross-community-working-group-08-10-2018) and a Proposed Final Report (/en/public-comment/proceeding/proposed-final-report-of-the-new-gtld-auction-proceeds-cross-community-working-group-23-12-2019) out for Public Comment, and took those comments into consideration in the development of the Final Report. The ICANN Board and ICANN Org participated throughout the CCWG-AP work. The ICANN Board maintained two liaisons to the CCWG-AP, regularly attending and participating in meetings, as well as working with the Board to develop inputs to the CCWG-AP work. The ICANN Board and the CCWG-AP maintained active correspondence (https://community.icann.org/display/CWGONGAP/Correspondence) documenting requests for inputs and responses, including the ICANN Board's 2018 development

of Board Principles (https://community.icann.org/display/CWGONGAP/Correspondence?preview=/64075095/84224627/2018-05-30%20ICANN%20Board%20response%20to%20CCWG-AP%5B2%5D.pdf) against which any CCWG-AP proposal would be assessed. ICANN org also identified staff experts, as allowed under the Charter, to provide inputs to the CCWG-AP on legal and fiduciary considerations, with the ICANN's Chief Financial Officer and a senior member of ICANN's legal team in regular attendance.

Whereas, the CCWG-AP submitted its Final Report to its chartering organizations in March 2020, and, by 1 September 2020, received confirmation of adoption or support (https://community.icann.org/display/CWGONGAP/Final+Report+Adoption+by+COs) from all seven SOs and ACs. The Final Report was then transmitted to the ICANN Board on 14 September 2020 (https://community.icann.org/display/CWGONGAP/Correspondence?preview=/64075095/147851105/Letter%20from%20CCWG%20Auction%20Proceeds%20Co-Chairs%20to%20ICANN%20Board_upd%2014%20Sept%202020.pdf).

Whereas, the eventual distribution of auction proceeds presents an exceptional opportunity to make a difference in the Internet ecosystem and positively impact people across the globe in furtherance of ICANN's mission.

Whereas, the Board Caucus on Auction Proceeds reviewed the recommendations of the CCWG-AP and ICANN org's assessment (/en/system/files/files/icann-org-assessment-ccwg-ap-recommendations-12jun22-en.pdf) of the recommendations, taking into account the Board Principles, and recommended to the ICANN Board the approval of all recommendations as set out in the CCWG-AP's Final Report.

Resolved (2022.06.12.13), the Board thanks the members and participants of the Cross-Community Working Group on New gTLD Auction Proceeds for their dedication and work to achieve the CCWG-AP Final Report.

Resolved (2022.06.12.14), the Board adopts all recommendations within the CCWG-AP Final Report, taking action on each of the recommendations as specified within the Scorecard titled "CCWG on Auction Proceeds Final Report Recommendations - Board Action." (/en/system/files/files/scorecard-ccwg-ap-final-recommendations-board-action-12jun22-en.pdf) The Board directs ICANN's President and CEO, or his designee(s), to take all actions as directed within that Scorecard (/en/system/files/files/scorecard-ccwg-ap-final-recommendations-board-action-12jun22-en.pdf) and to ultimately implement an ICANN Grant Giving Program that is aligned with ICANN's mission and based in sound governance practices.

Resolved (2022.06.12.15), the Board directs ICANN's President and CEO, or his designee(s), to produce no later than within 120 days following this resolution a preliminary implementation plan, including resourcing and timeline, allowing to proceed as soon as feasible with the implementation of the ICANN Grant Giving Program.

Resolved (2022.06.12.16), the Board directs the ICANN President and CEO, or his designee(s), to regularly report to the ICANN Board and the ICANN Community on the status of the implementation of the ICANN Grant Giving Program.

Rationale for Resolutions 2022.06.12.13 – 2022.06.12.16

Why is the Board addressing this issue?

As part of the 2012 New gTLD Program, ICANN Organization (ICANN Org) accepted applications for new generic top-level domain name strings. In cases where more than one application was received for the same or similar string, those applications were placed into "contention sets," and only one of those applied-for strings could move forward under the rules of the program. Applicants within those contention sets were encouraged to resolve the contention amongst themselves, but if they were not able to do so, the Applicant Guidebook outlined a "last resort" mechanism, an auction operated by an ICANN-authorized provider. The Applicant Guidebook outlined that "proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that directly supports ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status."

Sixteen (out of 234) contention sets within the 2012 New gTLD Program resulted in an auction of last resort. ICANN currently has approximately US$212 million of proceeds from these auctions in a segregated fund that is managed pursuant to an Auction Proceeds-specific investment policy (/resources/pages/investment-policy-new-gtld-2019-12-09-en). The ICANN Board has long committed that the auction

proceeds would continue to be maintained separately, pending a plan for their use developed by the multistakeholder community and authorized by the ICANN Board. The final amount of proceeds available for distribution through the ICANN Grant Giving Program remains subject to change.

In 2015, the Generic Names Supporting Organization (GNSO) took the lead in furthering Community dialogue in getting a plan together for the Board's consideration. After seeking public comment (/en/public-comment/proceeding/new-gtld-auction-proceeds-discussion-paper-08-09-2015), the community eventually converged on the initiation of a cross community working group to develop a recommendation for the use of the auction proceeds. The drafting work to charter the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) started in 2016, and in January 2017, CCWG-AP officially started its work. The CCWG-AP was chartered by all seven ICANN Supporting Organizations and Advisory Committees.

The CCWG-AP sought public comment on both an Initial Report and a proposed Final Report, and after taking the last round of public comments into consideration, in March 2020 submitted a Final Report to its chartering organizations. All seven SOs and ACs supported the Final Report, and on 14 September 2020, the CCWG-AP submitted the Final Report to the ICANN Board. The Final Report contains 12 recommendations and also identifies implementation guidance to support the program design.

After the Board received the CCWG-AP's Final Report, the Board began its work to consider the Final Report and the recommendations therein. The Board identified the questions it wanted to explore in its consideration of the Final Report, as described in a December 2020 blog (/en/blogs/details/board-consideration-of-the-auction-proceeds-report-22-12-2020-en). While the Board previously indicated that an operational design phase might be necessary to inform the Board's consideration of the CCWG-AP's recommendations, the subsequent efforts of ICANN org in assessing the recommendations support the Board moving directly to action on the CCWG-AP recommendations so that, subject to prioritization, implementation planning can take place.

ICANN org's assessment (/en/system/files/files/icann-org-assessment-ccwg-ap-recommendations-12jun22-en.pdf) of the CCWG-AP's recommendation examined the content of the recommendations, related CCWG-AP rationales and descriptions, and CCWG-AP implementation guidance. The recommendations were assessed (/en/system/files/files/icann-org-assessment-ccwg-ap-recommendations-12jun22-en.pdf) for initial feasibility, and also for consistency with a previously submitted list of Principles ("Board Principles"). The Board Caucus Group on Grant Giving, formerly Auction Proceeds (the "Board Caucus") considered the report and the ICANN org's assessment (/en/system/files/files/icann-org-assessment-ccwg-ap-recommendations-12jun22-en.pdf), and recommended that the Board adopts all 12 recommendations issued within the CCWG-AP Final Report, and take action as specified within the Scorecard titled "CCWG on Auction Proceeds Final Report Recommendations - Board Action." (/en/system/files/files/scorecard-ccwg-ap-final-recommendations-board-action-12jun22-en.pdf)

What is the proposal being considered?

The CCWG-AP Final Report includes twelve recommendations that, when taken as a whole, outline what will become the ICANN Grant Giving Program to distribute the proceeds collected from the auctions of last resort. The Final Report first requires the Board to select the mechanism that ICANN will use for the ICANN Grant Giving Program. The CCWG-AP converged on two possible mechanisms through which grant making could proceed. These mechanisms are:

- **Mechanism A**: An internal department dedicated to the allocation of Auction Proceeds is created within ICANN org.
- **Mechanism B**: An internal department dedicated to the allocation of Auction Proceeds is created within ICANN org that collaborates with an existing non-profit.

The CCWG-AP requested that the Board should take into account the preference expressed by CCWG-AP members for Mechanism A. The CCWG-AP determined that it would not recommend a third mechanism, Mechanism C, or the establishment of an ICANN foundation, as an option available for Board consideration.

Regardless of mechanism chosen, the CCWG-AP noted that there are a number of characteristics that are universal for ICANN's eventual grant making:

- The ICANN Board has legal and fiduciary oversight responsibility.
- Safeguards must be in place to ensure legal and fiduciary obligations are met.

- An independent panel of experts will evaluate the applications.
- Processes and procedures must be in place to ensure that the grants are used in a manner that contributes directly to ICANN's mission.
- ICANN Directors and Officers have an obligation to protect the organization through the use of available resources. In such a case, while ICANN would not be required to apply for the proceeds, the Directors and Officers have a fiduciary obligation to use the funds to meet the organization's obligations if necessary to do so.

The CCWG-AP Final Report, as a whole, sets out a cohesive outline for an ICANN Grant Giving Program. The 12 recommendations together cover not just who will run the ICANN Grant Giving Program, but also issues such as: what objectives should be served by the ICANN Grant Giving Program, who should evaluate applications for grants, legal and fiduciary safeguards to build in, the types of reviews that should be built into the program, and the role of the ICANN Community (or lack thereof) across the phases of the program. The recommendations in the Final Report are interrelated and have been grouped thematically for the Board's consideration:

- Mechanism (Recommendations #1, #9)
- Application Tranches (Recommendation #10)
- Independent Project Applications Evaluation Panel (Recommendation #2)
- Objectives of Proceeds Allocation (Recommendation #3, #11)
- Safeguards (Recommendation #4)
- Conflict of Interest Provisions (Recommendation #5)
- Governance Framework and Audit Requirements (Recommendation #6)
- ICANN Accountability Mechanisms, Appeals, and ICANN Bylaw Change (Recommendation #7)
- Reviews (Mechanisms and Overall Program) (Recommendation #12)
- ICANN Org / Constituent Parts Applying for Proceeds (Recommendation #8).

The full text of each recommendation is set out in the Scorecard titled "CCWG on Auction Proceeds Final Report Recommendations - Board Action." (/en/system/files/files/scorecard-ccwg-ap-final-recommendations-board-action-12jun22-en.pdf) Within the Final Report, the CCWG-AP outlined the reasoning supporting its recommendations, as well as guidance intended for ICANN Org review as part of implementation. As appropriate, the Board considered the additional context and guidance and at times relied upon this additional context in the development of its action and supporting rationale.

Because of the interrelated nature of the CCWG-AP recommendations, the Board notes it is appropriate to address the recommendations as a package.

Overarching Board Considerations

Consideration of the CCWG-AP's Final Report is the culmination of more than five years of ICANN Community work, whereby the ICANN Community determined how it would work collectively to recommend to the Board a process for distribution of the proceeds collected from auctions of last resort. The Board notes that all seven ICANN SOs and ACs supported the CCWG-AP's outcomes, and that the Final Report was reached after two separate public comment processes. Taking action today supports the Board's long-standing promise to the ICANN Community of the voice that it would have in how these auction proceeds are eventually distributed.

The ICANN Community effort towards developing this proposal is just one indicator of high interest in the topic. Today's action is the first step towards the design and implementation of an ICANN Grant Giving Program, that, at current value, has the potential to distribute grants that collectively exceed a single year of ICANN's operating costs. This is an exceptional opportunity for ICANN to support projects in line with its mission through independently evaluated grants.

The ICANN Board has paid close attention to the community work towards the development of this Final Report. Both the ICANN Board and ICANN Org participated through liaisons in the CCWG-AP work, including during the chartering phase, where the Board urged the community to be aware of key areas of concern (https://community.icann.org/display/NGAPDT/Background+Documents?preview=/58730906/58730908/Board%20Letter%20-%2011%20Feb%202016.pdf) to the Board, such as monitoring of conflict of interest considerations. The ICANN Board maintained two liaisons to the CCWG-AP, regularly attending and participating in meetings, as well as working with the Board to develop inputs to the CCWG-AP work. The ICANN Board and the CCWG-AP maintained active correspondence (https://community.icann.org/display/CWGONGAP/Correspondence), documenting requests for inputs and responses, including the ICANN Board's 2018 development of Board Principles

(https://community.icann.org/display/CWGONGAP/Correspondence?preview=/64075095/84224627/2018-05-30%20ICANN%20Board%20response%20to%20CCWG-AP%5B2%5D.pdf) against which any CCWG-AP proposal would be assessed. ICANN Org also identified staff experts, as allowed under the Charter, to provide inputs to the CCWG-AP on legal and fiduciary considerations, with the ICANN's Chief Financial Officer, and a senior member of ICANN's legal team in regular attendance.

The first issue the CCWG-AP addressed in its Final Report was what mechanism should be used to distribute the auction proceeds through grant-making. The CCWG-AP reviewed a range of options, from operating the grant-making internally (referred to by the CCWG-AP as "Mechanism A") to a fully external model where ICANN would entrust a separate entity with all responsibility for administration of grant-making and reporting. The CCWG-AP determined that it would provide the ICANN Board with a recommendation to choose between two mechanisms that would allow ICANN more direct involvement in the ongoing operation of the grant-making program, as those were the alternatives that the CCWG-AP identified better served ICANN's legal and fiduciary obligations and supported the Board Principles.

Today, the Board confirms that the CCWG-AP's proposed Mechanism A, which proposes that ICANN internally design and administer the ICANN Grant Giving Program, is the preferred mechanism for implementation. This aligns with the preference expressed by the CCWG-AP. Operating the ICANN Grant Giving Program directly through ICANN Org aligns with the Board Principles, including the duties and responsibility of the ICANN Board and Officers over the proceeds. Only this full internal responsibility will maintain ICANN as the entity with direct responsibility and accountability over the ICANN Grant Giving Program and allow ICANN to maintain the fiduciary and governance controls that are necessary for it to remain legally responsible for the grant-making process. Additionally, ICANN's maintenance of direct responsibility of the grant-making—as opposed to partnering with an external nonprofit that would be responsible for making the grants—assures that the ICANN Grant Giving Program will be operated with the enhanced transparency expected from ICANN, including responsibility for reporting grant recipients of ICANN's own tax filings.

As the Board vests responsibility in the ICANN President and CEO to implement the ICANN Grant Giving Program internally, the Board understands and expects that ICANN Org will likely need to collaborate with external organizations and contract for appropriate support across all aspects of the program. The CCWG-AP also acknowledged this. While grant-making is new to ICANN, the ICANN Board expects that the ICANN President and CEO will leverage expertise and resources to develop and implement a program that is right-sized to ICANN Org while also following well-established models of international grant-making.

The Board notes that the CCWG-AP's Final Report and recommendations embraced the key considerations and expectations that the Board expects to be present within the ICANN Grant Giving Program. The recommendations as approved set the groundwork for the design and implementation of an exemplary grant-making program that will support work across the world that aligns with ICANN's mission. This program shall be:

- Respectful of all of the necessary legal and fiduciary safeguards.
- Responsibly administered, preserving the most funds available for grant-making, while having the appropriate overhead and costs to support a world-class operation.
- Designed with the expectation that applicants across the globe have the opportunity to successfully apply for funds.
- Responsible in oversight, from the oversight of grantee compliance and program auditing needs, to regular program reviews to confirm the program processes and procedures are appropriate, to more intensive strategic reviews of whether the program is meeting the expected goals and intended impact.
- Built with vigilant protections to mitigate against the possibility of conflicts of interest influencing any part of the ICANN Grant Giving Program, from application and evaluation through to review.
- Respectful of the ICANN Community, including building in opportunities for those within the ICANN Community to have a role where appropriate. The program shall also be transparent in identifying the roles and responsibilities for all involved in the process, including ICANN Org, the ICANN Board, and the ICANN Community.
- Operated in a manner that adheres to good governance practices and upholds ICANN's commitment to accountability and transparency.

The CCWG-AP's recommendations provide significantly more detail surrounding some of these elements, and the Board in the Scorecard titled "CCWG on Auction Proceeds Final Report Recommendations - Board Action" (/en/system/files/files/scorecard-ccwg-ap-final-recommendations-board-action-12jun22-en.pdf) sets out specific Board actions and detailed supporting rationale as it relates to each. Those are all incorporated herein by reference. However, the recommendations that provide the framework for the ICANN Grant Giving Program are appropriate to consider working together as a whole. As the ICANN President and CEO moves forward through implementation, neither the Board nor the community should expect implementation plans built recommendation-by-recommendation.

The Board's approval of the CCWP-AP recommendations represents the start of a new phase of work within ICANN Org. There will need to be careful consideration of how to appropriately build a program in line with the expectations set out above. The ICANN President and CEO is therefore requested to maintain regular reporting to the ICANN Community and the Board on the status of implementation planning and design, including identification of timeframes when appropriate. The Board also recognizes that there may be a need along the implementation path for Board or Community inputs.

While there is still much work to be done, this action represents a key moment within ICANN. The commitment that the ICANN Board set out so many years ago—that the disbursement of the auction proceeds would be done in line with community developed proposals—has been upheld. The ICANN Community has devoted years of work toward reaching consensus recommendations. Today, the Board accepts those recommendations and looks to ICANN Org to start a new phase of work, implementing a program that will eventually deliver millions of dollars to projects around the world that support the global interoperability, reliability, and security of the Internet's unique identifiers. We should all be proud to reach this point.

Which stakeholders or others were consulted?

The ICANN Community has been broadly involved in the development of the CCWG-AP's Final Report. The CCWG-AP was chartered by all seven of ICANN's SOs and ACs and all SO/ACs participated in the CCWG-AP through appointed members to the working group. The working group was also open to participation from non-appointed individuals and organizations. The CCWG-AP met regularly, including sessions convened at ICANN Public Meetings. It held active discussions on its mailing list and provided updates to the chartering organizations and through newsletters to the wider ICANN Community. The CCWG-AP held two Public Comment Periods —one on its Initial Report (/en/public-comment/proceeding/initial-report-of-the-new-gtld-auction-proceeds-cross-community-working-group-08-10-2018) from 8 October 2018–11 December 2018 and one on its proposed Final Report (/en/public-comment/proceeding/proposed-final-report-of-the-new-gtld-auction-proceeds-cross-community-working-group-23-12-2019) from 23 December 2019-–14 February 2021. All seven SOs and ACs supported the Final Report before its transmission to the Board.

Of note, during the CCWG-AP's deliberations, it recognized the need for all stages of the process to be free from perceived, potential, or actual conflicts of interests. The CCWG-AP exercised a more heightened statement of interest practice than typically found within ICANN Community working groups. This practice included specific questions regarding whether participants in the CCWG-AP deliberations had any future intent to apply for grants under the eventual program. CCWG-AP members and participants maintained a Declarations of Intention on the public repository page (https://community.icann.org/pages/viewpage.action?pageId=63150102), in addition to standard Statements of Interests, recording responses to specific questions such as whether the individual or the organization with which they are affiliated intend to apply for future funding. As programming implementation progresses, specifically relating to future implementation questions, the Declarations of Interest are expected to be maintained for evaluation of future conflict of interest considerations.

What concerns or issues were raised by the Community?

The Final Report contains reference to the public comments received, reviewed, and addressed by the CCWG-AP in the development of the Final Report. The Final Report was ultimately endorsed by all seven chartering organizations. There is only one issue for which a minority statement was issued. The Commercial Stakeholders Group (CSG) challenged the CCWG-AP's characterization of the group's preference for the internally managed department to operate the grant giving mechanism. Within that minority statement, the Intellectual Property Constituency made further substantive objections to the use of an internal mechanism.

The ICANN Board notes the minority statement and the concerns raised therein. However, as closer review of the alternative to contract the grant-making to a partnering non-profit revealed significant concerns with ICANN's ability to maintain the levels of fiduciary control and responsibility it would expect over a grant-making process, that factor weighed more heavily in the Board's deliberation than the existence of a CCWG-AP preference. Further, the specific substantive concerns raised by the Intellectual Property Constituency (IPC) (i.e., potential for expansion of ICANN's remit; need for fundamental Bylaws change; risk to staffing levels when grant funding is depleted; and potential for appearance of self-dealing) are not concerns unique to a fully internally managed solution. Any involvement of ICANN in grant-making raises these same concerns and issues. The Board's expectations for a well-documented program adhering to good governance practices with clearly defined roles and responsibilities all serve to mitigate against the IPC's concerns.

What significant materials did the Board review?

The Board reviewed the CCWG-AP Final Report, ICANN Org Assessment: Recommendations of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) (/en/system/files/files/icann-org-assessment-ccwg-ap-recommendations-12jun22-en.pdf), and correspondence (https://community.icann.org/display/CWGONGAP/Correspondence) between the ICANN Board and the CCWG-AP documenting requests for inputs and responses, including the ICANN Board's 29 September 2019 letter restating the Board Principles (https://community.icann.org/display/CWGONGAP/Correspondence?preview=/64075095/84224627/2018-05-30%20ICANN%20Board%20response%20to%20CCWG-AP%5B2%5D.pdf).

Are there positive or negative community impacts?

The eventual distribution of the auction proceeds presents an exceptional opportunity to make a difference in the Internet ecosystem and positively impact people across the globe in furtherance of ICANN's mission. The Board's acceptance of the CCWG-AP Final Report is also a key step in the Board fulfilling its commitment to have the ICANN Community develop recommendations for the eventual distribution of the auction proceeds, and recognizes the significant effort of the ICANN Community to get to this point.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the Community; and/or the public?

The ability to diligently disperse the funds for purposes consistent with ICANN's mission is an important fiduciary responsibility of the Organization.

The expenses incurred to develop the ICANN Grant Giving Program will be funded by the auction proceeds, not from ICANN Org's operational budget, as has been discussed with the CCWG and other groups by the ICANN Board and clarified by ICANN Org throughout discussions. This will be a significant effort and will require substantial resources for proper development that still need to be prioritized alongside other ICANN work.

Existing ICANN Org resources, in the form of expertise, time, and effort, will be needed to appropriately evaluate, design, and implement the work. These resources, as well as community contributions in the form of time, expertise, and participation, must be considered when evaluating how to prioritize these efforts as part of all the work the ICANN Org and Community are achieving.

Are there any security, stability, or resiliency issues relating to the DNS?

This action does not have a direct impact on the security, stability, or resiliency of the Internet's DNS. It is possible that some projects eventually supported by the ICANN Grant Giving Program may have a positive impact on the security, stability, and resiliency of the Internet's DNS.

Is this decision in the public interest and within ICANN's mission?

This decision supports both the public interest and ICANN's mission, as it directs the implementation of a program whereby significant amounts of money entrusted to ICANN's care will be distributed in alignment with ICANN's mission to worthy projects around the world.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

There is no defined policy process guiding this work. The CCWG-AP conducted two Public Comment Period reviews of the report during its work and the Public Comment Period input on the Draft Final Report formed part of the Board's assessment of the recommendations.

d. **Transfer of the .BY top-level domain and the .бел ("bel") top-level domain representing Belarus to Limited Liability Company Belarusian Cloud Technologies**

Resolved (2022.06.12.17), as part of the exercise of its responsibilities under the IANA Naming Function Contract with ICANN, IANA has reviewed and evaluated the request to transfer the .BY and .бел top-level domains to Belarusian Cloud Technologies LLC. The documentation demonstrates that the proper procedures were followed in evaluating the request.

Rationale for Resolution 2022.06.12.17

Why is the Board addressing the issue now?

In accordance with the IANA Naming Function Contract, PTI, in the performance of the IANA Naming Function (IANA), has evaluated a request for ccTLD transfer and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to transfer the .BY and .бел top-level domains and assign the role of manager to Belarusian Cloud Technologie LLC.

Which stakeholders or others were consulted?

In the course of evaluating this transfer application, IANA consulted with the applicant and other significantly interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

IANA is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

[Redacted: Sensitive Delegation Information]

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country-code top-level domains are designated to serve, and responsive to obligations under the IANA Naming Function Contract.

Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS?

ICANN does not believe this request poses any notable risks to security, stability, or resiliency. This is an Organizational Administrative Function not requiring public comment.

Is this decision in the public interest and within ICANN's mission?

The oversight and performance of the IANA functions is directly within ICANN's mission and serves the public interest.

e. **Update on Independent Review Process re: Application of .GCC**

Whereas, GCCIX, W.L.L. (the applicant for .GCC) initiated an Independent Review Process (IRP) challenging the ICANN Board's acceptance of Governmental Advisory Committee (GAC) consensus advice that the .GCC application should not proceed (GAC Advice).

Whereas, in light of certain prior IRP final declarations, the Board passed a resolution (/resources/board-material/resolutions-2021-09-12-en#2.b) "authoriz[ing] the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application."

Whereas, ICANN organization sought but was not granted a stay of the .GCC IRP; and ICANN org asked (/en/system/files/correspondence/marby-to-ismail-09nov21-en.pdf) the GAC Chair to open the "informal dialogue."

Whereas, the GAC Chair responded (/en/system/files/correspondence/ismail-to-marby-25jan22-en.pdf) to ICANN org indicating that the GAC had reviewed "GAC discussions from 2013" and that the rationale for the GAC Advice was as follows (and as expressed in the GAC Early Warning (https://gac.icann.org/work-products/public/gcc-ae-21010-2012-11-20.pdf?version=1&modificationDate=1353382663000&api=v2)): (i) "The applied-for string (GCC) is an exact match of the known acronym for an Intergovernmental Organization (IGO), the Gulf Cooperation Council and as such, warrants special protection to its name and acronym."; and (ii) "The application clearly targeted the GCC community without any support from the GCC, its six members or its community."

Whereas, the Board Accountability Mechanisms Committee (BAMC) reviewed and considered the GAC's January 2022 response, as well as other relevant materials. As a result, the BAMC has recommended that the Board: (a) ask the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board's acceptance of that advice, and relevant related materials; and (b) ask the BAMC to provide the Board with recommendations regarding next steps.

Resolved (2022.06.12.18), the Board hereby: (a) asks the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board's acceptance of that advice, and relevant related materials; and (b) asks the BAMC to provide the Board with recommendations regarding next steps.

Rationale for Resolution 2022.06.12.18

After careful review of the underlying facts, prior applicable Independent Review Process (IRP) final declarations, information from the Governmental Advisory Committee (GAC), and the Board Accountability Mechanisms Committee's (BAMC) recommendation, the Board has concluded that it would be both beneficial and advisable to conduct further evaluation of the GAC consensus advice that the .GCC application should not proceed and the Board's acceptance of that advice. The Board, therefore: (a) asks the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board's acceptance of that advice, and relevant related materials; and (b) asks the BAMC to provide the Board with recommendations regarding next steps.

Background Information

Extensive background information regarding GCCIX, W.L.L.'s .GCC application, the objections to the .GCC application, the GAC consensus advice that the .GCC application should not proceed, the prior applicable IRP final declarations, and the current IRP (.GCC IRP) initiated by GCCIX (Claimant) can be found in the Rationale and supporting Board materials for Board Resolution 2021.09.12.08 (/resources/board-material/resolutions-2021-09-12-en#2.b). Since the Board's 12 September 2021 Resolution "authoriz[ing] the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application," ICANN org has made efforts to seek a stay of the .GCC IRP and has engaged in an informal dialogue with the GAC regarding the GAC's consensus advice in 2013 that the .GCC application should not proceed (GAC Advice).

ICANN org sent a letter (/en/system/files/correspondence/marby-to-ismail-09nov21-en.pdf) to the GAC Chair on 9 November 2021 to open the informal dialogue, seek input from the GAC regarding how it would like to engage with ICANN org in this dialogue, and ask whether the GAC would like to receive any additional information

from ICANN org on the topic. As an initial response, the GAC requested that ICANN org provide some factual background to the GAC on the matter, which ICANN org did on 14 December 2021. The GAC discussed the matter on 14 December 2021 and on 20 January 2022. On 25 January 2022, the GAC Chair sent a letter (/en/system/files/correspondence/ismail-to-marby-25jan22-en.pdf) to ICANN org indicating that the GAC had reviewed "GAC discussions from 2013" and that the rationale for the GAC Advice was as follows (and as expressed in the GAC Early Warning (https://gac.icann.org/work-products/public/gcc-ae-21010-2012-11-20.pdf?version=1&modificationDate=1353382663000&api=v2)): (i) "The applied-for string (GCC) is an exact match of the known acronym for an Intergovernmental Organization (IGO), the Gulf Cooperation Council and as such, warrants special protection to its name and acronym."; and (ii) "The application clearly targeted the GCC community without any support from the GCC, its six members or its community."

In furtherance of the Board directing ICANN org to seek a stay of the .GCC IRP pending conclusion of the GAC dialogue, ICANN org made several attempts to seek agreement from Claimant or an order from the IRP panelists in the .GCC IRP, but no stay of the IRP has been granted. Accordingly, the .GCC IRP is moving forward.

ICANN has generally followed a practice of not taking any actions on applications that are the subject of a pending Accountability Mechanism out of deference to ICANN's Accountability Mechanisms. However, since there are certain similarities with the prior .AFRICA and .AMAZON IRPs as well as guidance provided in those IRP final declarations, the Board has determined that, under these circumstances, this is an opportunity to consider alternatives to that general practice. Accordingly, and pursuant to the Board's 12 September 2021 Resolution, the BAMC reviewed the GAC's response (resulting from the informal dialogue with ICANN org) and other relevant materials, including the guidance set forth in the two prior applicable IRP final declarations, in which those panels indicated that ICANN should have conducted an independent investigation to determine whether the "GAC advice [was] supported by well-founded public interests." The BAMC discussed potential next steps with regard to the GAC Advice and the .GCC application, and has recommended that the Board: (a) ask the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board's acceptance of that advice, and relevant related materials; and (b) ask the BAMC to provide the Board with recommendations regarding next steps. The Board agrees with this approach.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures. This accountability includes having a process in place by which a person or entity materially affected by an action of the ICANN Board or staff may request reconsideration of that action or inaction by the Board.

This action should have no financial impact on ICANN that is not already provided for in the remaining New gTLD Program application fees from the 2012 round of new gTLDs. This action will not negatively impact the security, stability, and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Published on 13 June 2022

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1 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#note1)

Reference ASO MOU with ICANN (2019) (https://aso.icann.org/wp-content/uploads/2019/11/ASO-MoU-Executed-Nov-7-2019.pdf), item 9.

Related Documents

Agenda | Regular Meeting of the ICANN Board (/en/board-activities-and-meetings/materials/agenda-regular-meeting-of-the-icann-board-12-06-2022-en)

Minutes | Regular Meeting of the ICANN Board (/en/board-activities-and-meetings/materials/minutes-regular-meeting-of-the-icann-board-12-06-2022-en)

Preliminary Report | Regular Meeting of the ICANN Board (/en/board-activities-and-meetings/materials/preliminary-report-regular-meeting-of-the-icann-board-12-06-2022-en)

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Participate (/en/about/participate)
Diversity at ICANN (/diversity-en)
Groups (/resources/pages/groups-2012-02-06-en)
Board Members (/en/board/directors)
CEO Corner (/en/ceo-corner)
Staff (/organization)
Careers (/en/careers)
Public Responsibility (/dprd)

CONTACT US

Locations (/locations)
I Need Help (/en/help)
Report Security Issues (/resources/pages/report-security-issues-2018-05-24-en)
Certificate Authority (/contact/certificate-authority)
Registry Liaison (/resources/pages/contact-f2-2012-02-25-en)
Ombuds (/ombuds)
Complaints Office (/complaints-office)
Media Resources (/media-en)

ACCOUNTABILITY AND TRANSPARENCY

Accountability Mechanisms (/en/news/in-focus/accountability/mechanisms)
Document Disclosure (/en/about/transparency)
Independent Review Process (/resources/pages/irp-2012-02-25-en)
Request for Reconsideration (/resources/pages/accountability/reconsideration-en)
Empowered Community (/ec)
Employee Anonymous Hotline Policy and Procedures (/employee-anonymous-hotline-policy-procedures-whistleblower)

GOVERNANCE

Governance Documents (/en/about/governance)
Agreements (/en/about/agreements)
Organizational Reviews (/resources/reviews/org)
Specific Reviews (/resources/reviews/aoc)
Annual Report (/about/annual-report)
Financials (/en/about/financials)
Planning (/en/about/planning)
RFPs (/en/news/rfps)
Litigation (/en/news/litigation)
Correspondence (/en/news/correspondence)

HELP

Dispute Resolution (/en/help/dispute-resolution)
Domain Name Dispute Resolution (/en/help/dndr)
Name Collision (/en/help/name-collision)
ICANN Lookup (https://whois.icann.org/en)

DATA PROTECTION

Data Privacy Practices (/privacy)

Privacy Policy (/privacy/policy)
Terms of Service (/privacy/tos)
Cookie Policy (/privacy/cookies)

Ex. R-30

RESPONDENT'S EXHIBIT

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Approved Resolutions | Regular Meeting of the ICANN Board | 30 April 2023

1. Consent Agenda

a. Appointment of Independent Audit Firm for FY23

Whereas, the Board Audit Committee has discussed a recommendation from ICANN org to engage [Redacted – Confidential Negotiation Information] to carry out the independent audit for the fiscal year ending 30 June 2023 and has recommended that the Board authorize the Interim President and CEO, or her designee(s), to take all steps necessary to carry out the engagement.

Resolved (2023.04.30.01), the Board authorizes the Interim President and CEO, or her designee(s), to take all steps necessary to engage Moss Adams and Moss Adams member firms as the audit firm(s) for the financial statements for the fiscal year ending 30 June 2023.

Resolved (2023.04.30.02), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article 3, section 3.5(b) of the ICANN Bylaws until the Interim President and CEO, or her designee(s), determines that the confidential information may be released.

Rationale for Resolutions 2023.04.30.01 – 2023.04.30.02

The audit firm [Redacted – Confidential Negotiation Information]. Based on the report from the organization and the Audit Committee's evaluation [Redacted – Confidential Negotiation Information], the Committee has recommended that the Board authorize the Interim President

and CEO, or her designee(s), to take all steps necessary to engage [Redacted – Confidential Negotiation Information] as ICANN's independent audit firm(s) for fiscal year 2023 for any annual independent audit requirements in any jurisdiction.

This furthers ICANN's accountability to its Mission and processes, and the results of the independent auditors' work will be publicly available. Taking this decision is both consistent with ICANN's Mission and in the public interest as the engagement of an independent audit firm is in fulfillment of ICANN's obligations to undertake an audit of ICANN's financial statements and helps serve ICANN's stakeholders in a more accountable manner.

This decision will have a fiscal impact on ICANN, which is accounted for in the FY23 ICANN Operating Plan and Budget. This decision should not have any direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function not requiring public comment.

b. Recommendation on Board Committee Appointment

Whereas, the Board Governance Committee has recommended that the Board appoint Nicolas Caballero to the Board Technical Committee (BTC) and the Chair of the BTC agrees with the recommendation.

Resolved (2023.04.30.03), the Board appoints Nicolas Caballero to the Board Technical Committee.

Rationale for Resolution 2023.04.30.03

Article 7, Section 7.2 and Article 14 of the ICANN Bylaws call for the Board to appoint, among other things, membership of each Board Committee. Nicolas "Nico" Caballero joined the Board in March 2023 as the non-voting Governmental Advisory Committee Liaison to the Board. Upon joining the Board, Nico expressed interest in serving on the Board Technical Committee (BTC). His experience as outlined in his **biography (/en/board/directors)** shows that he will bring valuable skills to the BTC.

The appointment of the Board Committee membership is consistent with ICANN's Mission and is in the public interest as it is important to ensure that the Board and its Committees have the properly skilled expertise to carry forth ICANN's Mission, Commitments and Core Values. This decision will have no direct fiscal impact on the organization and no impact on the security, stability, or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

2. Main Agenda

a. Amendments to Registrar Accreditation Agreement & Registry Agreement for RDAP

Whereas, the ICANN Board **accepted (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-dakar-28-10-2011-en#5)** the advice from SAC051 on 28 October 2011 and directed ICANN organization to produce, in consultation with the community, a roadmap for the coordination of the technical and policy discussions necessary to evaluate and adopt a replacement for the WHOIS protocol.

Whereas, the **Base gTLD Registry Agreement (RA) (/en/registry-agreements/base-agreement)** and **2013 Registrar Accreditation Agreement (RAA) (/resources/pages/approved-with-specs-2013-09-17-en)** both provide that, until ICANN requires a different protocol, the contracted party will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service providing free public query-based access in the required format. The RA and RAA further provide that ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the contracted party will implement such alternative specification as soon as reasonably practicable.

Whereas, ICANN org and members of the gTLD Registries Stakeholder Group (RySG) and the Registrar Stakeholder Group (RrSG), collectively the Contracted Party House Negotiating Team (CPH-NT), worked together to draft proposed Global Amendments to the RA and RAA to specify the operational requirements for providing Registration Data Directory Services (RDDS) via the Registration Data Access Protocol (RDAP).

Jump To:

1. Consent Agenda (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section1)

a. Appointment of Independent Audit Firm for FY23 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section1.a)

b. Recommendation on Board Committee Appointment (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section1.b)

Rationale for Resolution 2023.04.30.03 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section1.b.rationale)

2. Main Agenda (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section2)

a. Amendments to Registrar Accreditation Agreement & Registry Agreement for RDAP (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section2.a)

b. ICANN FY24-28 Operating and Financial Plan, ICANN FY24 Operating Plan and Budget (/en/board-activities-and-

meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#section2.b)

c. Policy Recommendations

Whereas, the proposed Global Amendments include reporting requirements for registries that include changes to address the advice from the ICANN Security and Stability Advisory Committee in **SAC097 (/en/system/files/files/sac-097-en.pdf)** related to inconsistent reporting of RDDS queries.

Whereas, the proposed Global Amendments include a change to the language of Specification 4, Section 3.1 of the RA that will enable ICANN org to use the existing Bulk Registration Data Access (BRDA) for research purposes.

Whereas, the proposed Global Amendments were posted for the contracted parties' approval and received Registry Operator Approval, Registrar Approval, and Brand Registry Operator Approval, as defined in each of the RA, RAA, and Specification 13 of the RA.

Whereas, the Board determined that no further revisions to the proposed Global Amendments are necessary after taking the public comments and voting results into account.

Resolved (2023.04.30.04), the Board approves the proposed Global Amendments to the Base gTLD Registry Agreement, the 2013 Registrar Accreditation Agreement, and Specification 13 to the Base gTLD Registry Agreement.

Resolved (2023.04.30.05), the Board directs the ICANN Interim President and CEO, or her designee(s), to take the actions necessary to finalize and effect the Global Amendments.

Rationale for Resolutions 2023.04.30.04 – 2023.04.30.05

Why is the Board addressing the issue now?

In 2010, the ICANN community held **discussions (https://archive.icann.org/en/meetings/cartagena2010/node/15423.html)** about the need for the technical evolution of the WHOIS system, citing that the WHOIS protocol did not meet the community's needs. On 19 September 2011, the Security and Stability Advisory Committee (SSAC) issued **SAC051 (/en/system/files/files/sac-051-en.pdf)** advising the ICANN community to evaluate and adopt a replacement for the WHOIS protocol. The SSAC made the recommendation based on the shortcomings found with the WHOIS protocol such as the lack of (1) support for internationalization, (2) secure access to data, (3) differentiated access, and (4) standardized query, response, and error responses.

In 2011, the ICANN Board passed a **resolution (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-dakar-28-10-2011-en#5)** directing staff to produce, in consultation with the community, a roadmap for the coordination of the technical and policy discussions necessary to implement the recommendations outlined in SAC051. Subsequently, RDAP was developed by the technical community through the Internet Engineering Task Force (IETF) as described in **STD95 (https://www.rfc-editor.org/info/std95)**. In 2017, ICANN launched the voluntary **RDAP pilot program (/en/announcements/details/registration-data-access-protocol-rdap-pilot-program-launches-5-9-2017-en)** at the **request (/en/system/files/correspondence/diaz-to-atallah-01aug17-en.pdf)** of the gTLD Registries Stakeholder Group and with the support of the Registrar Stakeholder Group.

On 17 May 2018, the ICANN Board passed a **resolution (/resources/board-material/resolutions-2018-05-17-en)** adopting a **Temporary Specification for gTLD Registration Data (/resources/pages/gtld-registration-data-specs-en)** requiring (1) registry operators and registrars to operate a RDAP service, (2) ICANN org and the community to define the appropriate RDAP profile(s), and (3) registry operators and registrars to implement the service no later than 135 days after being requested by ICANN. Both the 2013 RAA and the RA include an obligation to implement the new RDDS protocol within 135 days of ICANN's request once the IETF produces a standard; and for registries, the implementation of the standard must be considered commercially reasonable in the context of the overall operation of the registry.

In February 2019, pursuant to requirements in the RA, RAA, and the Temporary Specification for gTLD Registration Data, ICANN org triggered the obligations for all registries and registrars to implement RDAP by **26 August 2019 (/en/system/files/files/legal-notice-implementation-rdap-service-27feb19-en.pdf)**. Subsequently in October 2019, ICANN org initiated negotiations with the RySG and RrSG to develop amendments to the **RA (/en/system/files/correspondence/marby-to-austin-21oct19-en.pdf)** and the **RAA (/en/system/files/correspondence/marby-to-bunton-21oct19-en.pdf)** to specify the operating requirements for RDAP and to define the plan to sunset obligations to provide RDDS via the WHOIS protocol.

In July 2022, ICANN and the CPH-NT reached agreement on the proposed amendments and the amendments were posted for **public comment (/en/public-comment/proceeding/proposed-amendments-to-the-base-gtld-ra-and-raa-to-add-rdap-contract-obligations-06-09-2022)** from 6 September through 16 November 2022. As set out in the Public Comment Summary **Report**

(https://itp.cdn.icann.org/en/files/registry-agreement/public-comment-summary-report-proposed-amendments-base-gtld-ra-raa-add-rdap-contract-obligations-16-12-2022-en.pdf), ICANN org and the CPH-NT confirmed that the proposed amendments met the stated objective of creating clear contractual obligations for registry operators and registrars to provide RDDS via RDAP and phasing out certain obligations to provide RDDS via the WHOIS protocol.

On 4 January 2023, ICANN org notified applicable registries, applicable brand registries, and applicable registrars of their eligibility to vote on the proposed Global Amendments to the RA, Specification 13 of the RA, and RAA. The 60-day voting period opened at 17:00 UTC on 19 January 2023 and closed at 23:59 UTC on 20 March 2023. Table 1 below provides an overview of the required thresholds to be considered approved by Applicable Registry Operators, Applicable Brand Registry Operators, and Applicable Registrars, respectively. All calculations of the vote were conducted pursuant to Section 7.6(j)(ii) of the RA, Section 9 of Specification 13 to the RA, and Section 1.18.1 of the RAA.

Table 1: Global Amendment Vote Thresholds and Tabulations

	Required Threshold	Final Vote Tabulations
Applicable Registry Operator - Fee Threshold	$25,668,185.81	$28,559,070.20
Applicable Brand Registry Operator - Fee Threshold	$6,639,529.04	$6,827,060.77
Applicable Registry Operator - Majority Threshold	581	856
Applicable Brand Registry Operator - Majority Threshold	202	272
Applicable Registrar Approval - Threshold	90%	91.74%

What is the proposal being considered?

The contractual amendments negotiated between ICANN org and the CPH-NT include:

- A requirement to comply with the RDAP profile.
- Updated definitions for RDDS-related terms; this includes updating Specification 13 for .BRAND Registry Operators.
- Reporting requirements for registries that include changes to address the advice from the SSAC in **SAC097 (/en/system/files/files/sac-097-en.pdf)** related to inconsistent reporting of RDDS queries.
- Service Level Requirements for RDAP availability, round-trip time, and update time.
- The sunset of the requirements to provide RDDS via the WHOIS protocol over a period of 18 months from the amendment effective date.
- The requirement for registrars to provide RDAP for all gTLD Domains Under Management, eliminating the option for registrars supporting registries that provide complete contact information in their RDDS to relay the registration data from the registry.
- A change to the language of Specification 4, Section 3.1 of the RA that will permit ICANN org to use the existing Bulk Registration Data Access (BRDA) for research purposes. This amendment will enable ICANN to use BRDA data to conduct important research for projects such as the **Domain Abuse Activity Reporting System (DAAR) (/en/blogs/details/a-step-toward-a-more-comprehensive-dns-security-threat-analysis-11-6-2021-en)**. DAAR is a system for studying and reporting on domain name registration and security threats. The overarching purpose of DAAR is to develop a robust, reliable, and reproducible methodology for **analyzing security threat activity (/octo-ssr/daar#_ftn1)**, which the ICANN community may use to make informed policy decisions.
- Updates to Uniform Resource Locator (URL) web addresses in the RA and miscellaneous changes (e.g., URLs updated to "https" from "http") to address outdated links.

Which stakeholders or others were consulted?

ICANN org conducted a Public Comment proceeding on the proposed Global Amendments from 06 September 2022 through 16 November 2022. The Global Amendments received Registry Operator Approval, Brand Registry Operator Approval, and Registrar Approval in accordance with Section 7.6(j)(ii) of the RA, Section 9 of Specification 13 to the RA, and Section 1.18.1 of the RAA.

What concerns or issues were raised by the community?

ICANN org received five (5) comments from five (5) organizations. Comments noted in the Public Comment Summary **Report (https://itp.cdn.icann.org/en/files/registry-agreement/public-comment-summary-report-proposed-amendments-base-gtld-ra-raa-add-rdap-contract-obligations-16-12-2022-en.pdf)** provided general support for the proposed amendments with three (3) organizations offering feedback for ICANN org to consider before additional steps were taken. Two organizations, the SSAC and the Business Constituency, raised the concern that the sunsetting of web-based WHOIS may have a negative impact for end users as the deployment of RDAP lookup services may vary by registry and the loss of human-readable output to queries via web-based WHOIS may be lost in the transition.

However, tools such as **https://lookup.icann.org (https://lookup.icann.org)** from ICANN org provides a domain name registration data lookup tool, freely available to the general public. This tool uses the RDAP protocol to perform domain registration data queries and provides results in a human-friendly output and similar tools are also readily available. The advantages of the RDAP protocol and the provisions contained in the proposed Global Amendment, such as adherence to certain output requirements (i.e., the RDAP Profile), allow for tools such as these mentioned to exist.

Following a review of the public comments by ICANN org and the CPH-NT, the comments confirmed that the proposed amendments met the stated objective of creating clear contractual obligations for registry operators and registrars to provide RDDS via RDAP and phasing out certain obligations to provide RDDS via the WHOIS protocol. ICANN org and the CPH NT also determined that based on the comment from the SSAC, a modification to the proposed RA Specification 3 was appropriate and was made before the amendments were posted for the contracted parties' approval.

What significant materials did the Board review?

As part of its deliberations, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- **Base gTLD Registry Agreement (RA) (/en/registry-agreements/base-agreement)**
- **Proposed Global Amendment to the Base gTLD Registry Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-global-amendment-base-gtld-registry-agreement-12-04-2023-en.pdf)**
- **Proposed REDLINE of the Base gTLD Registry Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-redline-base-gtld-registry-agreement-11-01-2023-en.pdf)**
- **Proposed CLEAN Base gTLD Registry Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-clean-base-gtld-registry-agreement-11-01-2023-en.pdf)**
- **2013 Registrar Accreditation Agreement (RAA) (/resources/pages/approved-with-specs-2013-09-17-en)**
- **Proposed Global Amendment to the 2013 Registrar Accreditation Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-global-amendment-registrar-accreditation-agreement-12-04-2023-en.pdf)**
- **Proposed REDLINE of the 2013 Registrar Accreditation Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-redline-2013-registrar-accreditation-agreement-11-01-2023-en.pdf)**
- **Proposed CLEAN 2013 Registrar Accreditation Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-clean-2013-registrar-accreditation-agreement-11-01-2023-en.pdf)**
- **Specification 13 to the Base gTLD Registry Agreement (Spec 13) (/en/registry-agreements/related-materials?section=specification-13)**
- **Proposed Global Amendment to Specification 13 of the Base gTLD Registry Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-global-amendment-spec13-12-04-2023-en.pdf)**
- **Proposed REDLINE of Specification 13 of the Base New gTLD Registry Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-redline-spec13-11-01-2023-en.pdf)**
- **Proposed CLEAN Specification 13 of the Base gTLD Registry Agreement (https://itp.cdn.icann.org/en/files/registry-agreement/proposed-clean-spec13-11-01-2023-en.pdf)**
- **Public Comment Summary Report (https://itp.cdn.icann.org/en/files/registry-agreement/public-comment-summary-report-proposed-amendments-base-gtld-ra-raa-add-rdap-contract-obligations-16-12-2022-en.pdf)**

What factors has the Board found to be significant?

The Board carefully considered the public comments received for the proposed Global Amendments, along with the summary and analysis of those comments. The Board also considered the terms agreed upon by the CPH-NT as part of the negotiations with ICANN org. The

Board appreciates the general support from the ICANN community for the new contractual obligations for RDAP negotiated between ICANN and the CPH-NT and for the steps taken to enable the use of BRDA for research purposes, e.g., to combat DNS abuse.

The Board also acknowledges the concern expressed by some community members regarding the sunset of the WHOIS protocol and that the proposed RAA amendment removes the "interactive web page" currently offered by registrars. However, the Board notes that users will have suitable, if not improved, tools to conduct queries for domain name registration data based on the current implementation of RDAP by all registries and registrars, the lookup tool from ICANN and other similar offerings, and furthered by the requirements set forth in the proposed Global Amendments. This is because Domain Name Registration Data is decentralized, meaning it is held at each of the relevant ICANN Accredited registrars and gTLD registry operators. After the transition to RDAP, the individual, interactive web-pages offered by each registrar and registry for WHOIS queries are no longer necessary because the RDAP protocol allows for user-friendly lookup queries from a centralized client such as the ICANN lookup tool (**https://lookup.icann.org (https://lookup.icann.org)**). Thus, finding sources to look up registration data should not be a challenge as searching for "domain registration lookup" in most search engines today will offer free tools, frequently with the ICANN org tool as the first result. Guiding users to centralized tools where the only required knowledge is the domain name they seek registration date for (as opposed to the user needing to know which registrar was used to register the name, as is the case with the WHOIS protocol) is a better solution than explaining the number of steps required to find the correct sponsoring registrar and its interactive web page for querying domain name registration data.

The Board further recognizes the input from the SSAC regarding SAC097 and that the originally proposed language in Specification 13 of the amendment to the RA may still report per-TLD statistics inaccurately for TLDs under shared registry systems. While ICANN and the CPH-NT were satisfied that the originally proposed language was a significant improvement over the existing language of the RA, additional language has been added to the RA amendment to further clarify (see below in blue). Once implemented this will provide additional accuracy for reporting for TLDs in this scenario.

For gTLDs that are part of a single-instance Shared Registry System: (1) the fields whois43-queries, web-whois-queries, searchable-whois-queries and rdap-queries in the Registry Functions Activity Report should match the sum of queries reported for the gTLDs in the single-instance Shared Registry System; (2) in case of queries related to the fields in (1) above for which the Registry Operator cannot determine the TLD to count the query to (e.g., a registrar lookup query for a registrar operating in more than one TLD sharing the same RDAP base URL), registries have the flexibility to choose how to allocate those queries across the gTLDs utilizing the single-instance Shared Registry System; and (3) the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.

The Board is confident the contractual language added by ICANN org and the CPH-NT following the Public Comment period adequately clarifies what is required and, once implemented, will provide additional accuracy for reporting for TLDs under share registry systems.

Are there fiscal impacts or ramifications on ICANN org (e.g., strategic plan, operating plan, and budget), the community, and/or the public?

There is no significant fiscal impact expected from the approved amendments to the RA, Specification 13, or the RAA. In February 2019, pursuant to requirements in the RA, RAA, and the Temporary Specification for gTLD Registration Data, ICANN org triggered the obligations for all registries and registrars to implement RDAP by **26 August 2019 (/en/system/files/files/legal-notice-implementation-rdap-service-27feb19-en.pdf)** and no additional cost considerations or impacts to registries and registrars should be incurred.

Are there any security, stability or resiliency issues relating to the DNS?

The approved amendments to the RA, Specification 13, and RAA are not expected to create any security, stability, or resiliency issues related to the DNS.

b. ICANN FY24-28 Operating and Financial Plan, ICANN FY24 Operating Plan and Budget

Whereas, the draft ICANN FY24-28 Operating and Financial Plan and draft ICANN FY24 Operating Plan and Budget were posted for public comment in accordance with the Bylaws on 14 December 2022.

Whereas, the public comments received were considered and revisions were applied as appropriate and feasible to the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and Proposed for Adoption ICANN FY24 Operating Plan and Budget.

Whereas, in addition to the public comment process, ICANN organization actively solicited community feedback and consultation with the ICANN Community by other means, including a public session during ICANN 76.

Whereas, the Board Finance Committee (BFC) has discussed and oversaw ICANN organization's development of the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and the Proposed for Adoption ICANN FY24 Operating Plan and Budget.

Whereas, the BFC reviewed and discussed suggested changes to the ICANN FY24-28 Operating and Financial Plan and the ICANN FY24 Operating Plan and Budget resulting from public comment and consultations, as well as those resulting from recent Board decisions, and recommended that the Board approve the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and the Proposed for Adoption ICANN FY24 Operating Plan and Budget.

Whereas, per section 3.9 of the 2013 Registrar Accreditation Agreements, the Board is to establish the Registrar Accreditation Fees and Variable Accreditation Fees, which must be established to develop the annual budget.

Whereas, the description of the Registrar fees, including the recommended Registrar Accreditation Fees Variable Accreditation Fees, for FY24 are included in the Proposed for Adoption ICANN FY24 Operating Plan and Budget.

Resolved (2023.04.30.06), the Board adopts the ICANN FY24-28 Operating and Financial Plan, which describes the activities ICANN will undertake and the resources needed to achieve the Board-adopted ICANN Strategic Plan for Fiscal Years 2021-2025.

Resolved (2023.04.30.07), the Board adopts the ICANN FY24 Operating Plan and Budget including the FY24 ICANN Caretaker Budget that would be in effect in the event the FY24 ICANN Operating Plan and Budget is not in effect at the beginning of FY24.

Rationale for Resolutions 2023.04.30.06 – 2023.04.30.07

On 14 December 2022, a draft of the ICANN FY24-28 Operating and Financial Plan and draft ICANN FY24 Operating Plan and Budget were posted for public comment. The published draft ICANN FY24-28 Operating and Financial Plan and draft ICANN FY24 Operating Plan and Budget were based on numerous discussions with members of ICANN organization and the ICANN community, including extensive consultations with ICANN Supporting Organizations, Advisory Committees, and other stakeholder groups throughout the prior several months.

Public comments received were considered, as well as recent decisions by the ICANN Board, and revisions were applied as appropriate and feasible to the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and Proposed for Adoption ICANN FY24 Operating Plan and Budget.

In addition, the following consultation activities were carried out:

- 8 September 2022 – Community webinar held at ICANN 75 Prep Week on the Planning and Finance Update
- 15 December 2022 – Community webinars were held to review the draft ICANN FY24-28 Operating and Financial Plan and draft ICANN FY24 Operating Plan and Budget published for public comment
- 28 February 2023 – the summary of comments received through the public comment process were shared in a public session during the ICANN 76 Prep week, including with representatives of the ICANN bodies that submitted the public comments, to help ensure the comments were adequately understood and appropriate consideration was given to them.
- In addition to the public comment process, from December 2022 – February 2023 ICANN actively solicited community feedback and consulted with the ICANN community by other means, including attendance and presentations for At-Large Operations, Finance, and Budget Working Group, Generic Names Supporting Organization Standing Committee on ICANN Budget and Operations Plan, and Country Code Names Supporting Organisation Strategic and Operational Planning Standing Committee.

All comments received were considered in developing the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and the Proposed for Adoption ICANN FY24 Operating Plan and Budget. Where feasible and appropriate these inputs have been incorporated into the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and the Proposed for Adoption ICANN FY24 Operating Plan and Budget.

There were no changes to the Operating Plans, Funding or Expenses for the Proposed for Adoption ICANN FY24-28 Operating and Financial Plan and the Proposed for Adoption ICANN FY24 Operating Plan and Budget as a result of public comment. The only changes made to the Proposed for Adoption Plans were the result of Board passing resolutions for the New gTLD

Program Next Round and Registration for Data Request implementations after the Draft Plans were posted for public comment. The remainder of the changes were in narrative and presentation only.

In addition to the day-to-day operational requirements, the ICANN FY24 Operating Plan and Budget allocates amounts to various FY24 budget requests received from community leadership. The ICANN FY24 Operating Plan and Budget also discloses financial information on the 2012 Round of the New gTLD Program, relative to expenses, funding and net remaining funds. Further, because the Registrar Fees are key to the development of the Budget, the ICANN FY24 Operating Plan and Budget sets out and establishes those fees, which are consistent with recent years, and will be reviewed for approval by the Registrars.

The ICANN FY24-28 Operating and Financial Plan and the ICANN FY24 Operating Plan and Budget will have a positive impact on ICANN in that together they provide a proper framework by which ICANN will be managed and operated, which also provides the basis for the organization to be held accountable in a transparent manner.

This decision is in the public interest and within ICANN's mission, as it is fully consistent with ICANN's strategic and operational plans, and the results of which allow ICANN to satisfy its mission.

This decision will have a fiscal impact on ICANN org and the Community as is intended. This should have a positive impact on the security, stability and resiliency of the domain name system (DNS) with respect to any funding that is dedicated to those aspects of the DNS.

This is an Organizational Administrative Function that has already been subject to public comment as noted above.

c. Policy Recommendations concerning Curative Rights Protections for International Governmental Organizations (IGOs)

Whereas, on 5 June 2014, the Generic Names Supporting Organization (GNSO) Council resolved[1](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot1) to initiate a Policy Development Process (PDP) to evaluate whether ICANN's second-level dispute resolution mechanisms, the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension System (URS), should be amended to enable their access and use by International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs), or if a separate, narrowly-tailored procedure modeled on these curative rights protection measures should be developed to apply only to protected IGO and INGO identifiers.

Whereas, on 17 July 2018, the GNSO IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group completed its work and submitted its Final Report[2](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot2) to the GNSO Council.

Whereas, on 18 April 2019, the GNSO Council approved[3](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot3) the first four recommendations from the PDP Working Group. With respect to Recommendation #5, the GNSO Council directed the Review of All Rights Protection Mechanisms (RPMs) PDP Working Group to consider, as part of its Phase 2 work, whether an appropriate policy solution can be developed that is generally consistent with the four recommendations that the GNSO Council approved and in line with specific considerations laid out by the GNSO Council, including recognizing the possibility that an IGO may have jurisdictional immunity in some circumstances and preserving a registrant's right to a judicial review of a UDRP or URS panel decision.

Whereas, on 19 August 2021, in view of its decision to review the scope of Phase 2 of the RPMs PDP, the GNSO Council took the procedural step[4](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot4) of initiating an Expedited Policy Development Process (EPDP) on Specific Curative Rights Protections for IGOs, to continue the work originally launched as a separate IGO Work Track within the RPMs PDP and with the same scope of work.[5](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot5)

Whereas, on 4 April 2022, the EPDP on Specific Curative Rights Protections for IGOs completed its work and submitted its Final Report[6](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot6) to the GNSO Council.

Whereas, on 15 June 2022, the GNSO Council unanimously approved[7](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot7) all five Full Consensus recommendations from the EPDP on Specific Curative Rights Protections for IGOs and transmitted its Recommendations Report[8](/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot8) to the Board on 21 July 2022.

Whereas, the IGO-INGO Access to Curative Rights Protection Mechanisms PDP and the EPDP on Specific Curative Rights Protections for IGOs have followed all the necessary steps and processes required by the ICANN Bylaws, the GNSO PDP Manual and the GNSO Working Group Guidelines, including the publication of Initial Reports[9 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot9)] for Public Comments and consideration of the public comments received.

Whereas, on 11 July 2019 and 28 November 2022, respectively, the Final Reports of the IGO-INGO Access to Curative Rights Protection Mechanisms PDP and the EPDP on Specific Curative Rights Protections for IGOs were published for Public Comment[10 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot10)] to inform Board action on the reports, in accordance with the Bylaws.

Whereas, on 11 July 2019, the ICANN Board notified[11 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot11)] the Governmental Advisory Committee (GAC) of the GNSO Council's approval of four of the five recommendations from the IGO-INGO Access to Curative Rights Protection Mechanisms PDP, in accordance with the Bylaws, and on 20 August 2019, the GAC advised the Board to abstain from taking a decision to allow the parties sufficient time to explore possible ways forward.[12 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot12)]

Whereas, on 14 October 2019, the Board informed the GAC that the Board had formed a new Caucus Group on the topic, and it did not intend to act at the time on the four PDP recommendations until the Caucus Group has reviewed and formulated suggestions for possible paths forward[13 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot13)].

Whereas, on 1 December 2022, the Board notified[14 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot14)] the GAC of the GNSO Council's approval of all five recommendations from the EPDP on Specific Curative Rights Protections for IGOs.

Whereas, on 20 March 2023, in its Cancun Communiqué,[15 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot15)] the GAC advised the Board, to proceed with the approval of the recommendations of the EPDP on Specific Curative Rights Protections for IGOs for implementation.

Whereas, following review of the matter by the Board's Caucus Group, the Board has considered the recommendations that the GNSO Council approved from the two policy development processes as well as the Public Comments submitted.

Resolved (2023.04.30.08) the Board thanks the members of the IGO-INGO Access to Curative Rights Protection Mechanisms PDP Working Group and the members of the EPDP team on Specific Curative Rights Protections for IGOs for their dedication and work on these longstanding policy issues.

Resolved (2023.04.30.09), the ICANN Board adopts the four recommendations that the GNSO Council approved from the IGO-INGO Access to Curative Rights Protection Mechanisms PDP and the five recommendations that the GNSO Council approved from the EPDP on Specific Curative Rights Protections for IGOs.

Resolved (2023.04.30.10), the ICANN Board directs the ICANN Interim President and CEO, or her designee(s), to proceed with the implementation of these recommendations as soon as feasible. The Board further directs the ICANN Interim President and CEO, or her designee(s), to develop and submit to the Board an implementation plan, including estimates on staffing, resources and timelines, to inform the Board as to how the implementation of these recommendations fit into ICANN org's operational planning and prioritization of its ongoing work to implement other community-developed recommendations that the Board has adopted.

Rationale for Resolutions 2023.04.30.08 – 2023.04.30.10

Why is the Board addressing the issue?

The appropriate nature and scope of policy protections for the names and acronyms associated with International Governmental Organizations (IGOs) has been a longstanding issue in the community. In April 2014, following an initial GNSO PDP on Protection of IGO and INGO Identifiers in All gTLDs conducted between October 2012 and November 2013, the Board voted to adopt several GNSO PDP recommendations concerning top and second level protections for the full names of IGOs on a list prepared by the GAC. Those recommendations are now the subject of an ICANN Consensus Policy (effective 1 August 2018).[16 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot16)]

The GNSO PDP had also recommended that the GNSO Council consider policy work to explore possible amendments to the UDRP and URS, to enable their use by protected IGOs and INGOs. The GNSO Council initiated the IGO-INGO Access to Curative Rights Protection Mechanisms PDP to consider the issue in June 2014. In July 2019, the GNSO Council approved four of the five recommendations from the GNSO IGO-INGO Access to Curative Rights Protection Mechanisms PDP and directed that additional policy work be conducted on the subject of the fifth recommendation that it decided not to approve. This resulted in the GNSO Council's chartering of the EPDP on Specific Curative Rights Protections for IGOs in August 2021.

Throughout the various policy processes, the GAC had provided Consensus Advice to the Board on the overall topic of IGO protections, including, specifically, on the question of second-level curative rights protections in the Los Angeles (October 2014), Hyderabad (November 2016) and Johannesburg (June 2017) Communiqués. In its most recent Cancun Communiqué (March 2023), the GAC advised the Board to proceed to adopt the EPDP recommendations and noted that this advice superseded those from the previous Communiques insofar as the EPDP recommendations propose "targeted amendments to the UDRP Rules to accommodate IGOs in addressing the abuse of IGO identifiers in the DNS".

Under Section 11.3(i)(x) of the ICANN Bylaws, the GNSO Council's Supermajority support for the four PDP recommendations and its unanimous approval of the five subsequent EPDP recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

What is the proposal being considered?

The four recommendations that the GNSO Council approved from the 2019 PDP included specific recommendations not to create a new and separate dispute resolution mechanism for IGOs and INGOs. For INGOs (but not IGOs), there was an additional recommendation not to amend the UDRP or URS. The remainder of the recommendations focused on the provision of Policy Guidance on the UDRP and URS by ICANN org to IGOs, registrants and the GAC, noting the procedural options available to IGOs that do not hold trademarks in their acronyms.

The five recommendations that the GNSO Council approved from the 2022 EPDP achieved Full Consensus across the EPDP team, which included participants from the GAC and several IGOs. The recommendations include the addition of a definition of "IGO Complainant" and a voluntary arbitration component to both the UDRP and URS Rules, without affecting the respondent-registrant's ability to file judicial proceedings against an IGO at any time during a UDRP or URS proceeding. The recommendations also address the question of what the applicable law in an arbitration proceeding should be, and the EPDP team provided high-level implementation guidance regarding the selection of arbitration provider(s) and the applicable arbitration rules.

As required by Article 3, Section 6.a.iii of the ICANN Bylaws, the GNSO Council-approved recommendations from both the PDP and EPDP were posted for Public Comment to inform Board action on the final recommendations. In considering the recommendations, the Board also reviewed the Public Comments and received briefings from ICANN org as well as a briefing from the GNSO Council on the EPDP outcomes.

Which stakeholders or others were consulted?

In accordance with the requirements of the GNSO PDP Manual, the Working Group for the IGO-INGO Access to Curative Rights Protection Mechanisms PDP solicited early input from the Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies. It also engaged an external legal expert, Professor Edward Swaine of the George Washington University Law School in the United States, to provide advice on the topic of IGO jurisdictional immunity.

Concerns expressed by several GNSO Council members representing different sectors of the community regarding the one recommendation from the IGO-INGO Access to Curative Rights Protection Mechanisms PDP that the GNSO Council did not approve meant that the scope of work for the EPDP on Specific Curative Rights Protections for IGOs was the subject of extensive deliberations within the GNSO Council. The Council also consulted with the GAC and IGO representatives in drawing up the final charter for the work.

As mandated by the GNSO's PDP Manual, the PDP Working Group and the EPDP team both published their Initial Reports for Public Comments. There were 46 comments submitted to the Initial Report from the PDP Working Group on IGO-INGO Access to Curative Rights Protection Mechanisms, 21 of which were from IGOs, with five from different ICANN community structures. The EPDP team on Specific Curative Rights for IGOs received 33 comments, including six from IGOs and six from various ICANN community groups. Both the PDP Working Group and EPDP team considered all the input received in finalizing their recommendations, in some cases amending their preliminary proposals due to the Public Comments received.

As required by the ICANN Bylaws, additional Public Comment proceedings for both Final Reports were conducted, to allow the public to comment on the proposed recommendations prior to Board action. In addition, as also required by the Bylaws, the Board notified the GAC of the recommendations that the GNSO Council had transmitted to the Board, to allow the GAC to provide timely advice on any public policy concerns that it may have with the recommendations.

What concerns or issues were raised by the community?

The community provided feedback through Public Comments on the Initial and Final Reports from both the PDP Working Group and the EPDP team. ICANN org provided the Board with a summary report of all the Public Comments received to both sets of final recommendations.

In general, the community was divided in its support for the recommendations from the IGO-INGO Access to Curative Rights Protection Mechanisms PDP, with IGOs considering that the recommendations did not go far enough to protect IGO identifiers against abuse at the second level of the domain name system, while commentators representing registrants welcomed the PDP Working Group's recommendation not to create a new and separate dispute resolution procedure for IGOs and INGOs as well as its decision not to amend the UDRP and URS. For the subsequent EPDP recommendations, which will, if implemented, result in modifications to the UDRP and URS Rules, commentators representing registrants focused on the risk that registrant rights could be adversely affected or reduced if the recommendations were implemented in a way as to restrict a registrant's ability to file judicial proceedings against an IGO or to effectively compel a registrant to agree to arbitration. Those commentators representing the domain investor community were largely against the recommendations, while the IGO community and those ICANN community groups that submitted input were generally supportive.

What significant materials did the Board review?

The Board reviewed the following materials:

- From the IGO-INGO Access to Curative Rights Protection Mechanisms PDP:
  - Initial Report: **https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf (https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf)**
  - Final Report: **https://gnso.icann.org/en/issues/igo-ingo-crp-access-final-17jul18-en.pdf (https://gnso.icann.org/en/issues/igo-ingo-crp-access-final-17jul18-en.pdf)**
  - GNSO Council resolution approving four of the five final recommendations: **https://gnso.icann.org/en/council/resolutions#201905 (https://gnso.icann.org/en/council/resolutions#201905)**
  - GNSO Council Recommendations Report to the Board: **https://gnso.icann.org/sites/default/files/file/field-file-attach/council-recommendations-pdp-igo-ingo-crp-access-final-16may19-en.pdf (https://gnso.icann.org/sites/default/files/file/field-file-attach/council-recommendations-pdp-igo-ingo-crp-access-final-16may19-en.pdf)**
  - Report of Public Comments on the Final Report: **https://www.icann.org/en/system/files/files/report-comments-igo-ingo-crp-recommendations-04sep19-en.pdf (/en/system/files/files/report-comments-igo-ingo-crp-recommendations-04sep19-en.pdf)**
- From the EPDP on Specific Curative Rights Protections for IGOs:
  - Initial Report: **https://gnso.icann.org/en/issues/specific-crp-igo-epdp-initial-report-preliminary-recommendations-14sep21-en.pdf (https://gnso.icann.org/en/issues/specific-crp-igo-epdp-initial-report-preliminary-recommendations-14sep21-en.pdf)**
  - Final Report: **https://gnso.icann.org/en/issues/epdp-specific-crp-igo-final-report-02apr22-en.pdf (https://gnso.icann.org/en/issues/epdp-specific-crp-igo-final-report-02apr22-en.pdf)**
  - GNSO Council resolution approving all five final recommendations: **https://gnso.icann.org/en/council/resolutions/2020-current#202206 (https://gnso.icann.org/en/council/resolutions/2020-current#202206)**
  - GNSO Council Recommendations Report to the Board: **https://gnso.icann.org/sites/default/files/policy/2022/draft/draft-epdp-specific-curative-rights-protections-for-igos-report-11jul22-en.pdf (https://gnso.icann.org/sites/default/files/policy/2022/draft/draft-epdp-specific-curative-rights-protections-for-igos-report-11jul22-en.pdf)**
  - Report of Public Comments on the Final Report: **https://itp.cdn.icann.org/en/files/generic-names-supporting-organization-council-gnso-council/public-comment-summary-report-final-report-epdp-specific-curative-rights-protections-igos-01-03-2023-en.pdf (https://itp.cdn.icann.org/en/files/generic-names-supporting-organization-council-gnso-council/public-comment-summary-report-final-report-epdp-specific-curative-rights-protections-igos-01-03-2023-en.pdf)**

What factors did the Board find to be significant?

The Board appreciates the extensive work from across the community, including the GAC and IGOs, that resulted in the two sets of GNSO policy recommendations that are the subject of this vote, as well as the input provided throughout the policy process from numerous stakeholders, including individuals and governments. The Board notes that the community's policy work on the topic of curative rights protections for IGOs has spanned over ten years, culminating in the recent EPDP in which the GAC and IGO representatives participated, and which saw Full Consensus amongst all the members of the EPDP team on the final outcomes.

Are there positive or negative community impacts?

Adopting the final recommendations will have a positive impact on ICANN in that it will demonstrate that ICANN will have addressed complex issues and public policy concerns that have been the subject of longstanding and extensive community work. Board adoption of the recommendations will mean that IGOs that meet the criteria in the updated UDRP and URS Rules will be able to use these second-level dispute resolution mechanisms to address abusive registrations and use of domain names relating to their missions.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

Implementing the two sets of recommendations is expected to have financial and resourcing impacts on ICANN org. Modifying the UDRP and URS Rules will impact the various dispute resolution service providers as well as ICANN-accredited gTLD registrars who will have to implement the new requirements and update their processes. To ensure successful implementation, it will be necessary to seek the cooperation and guidance of ICANN's current dispute resolution service providers.

In addition, as implementing the earlier PDP recommendations will require drafting of Policy Guidance to numerous parties and implementing the subsequent EPDP recommendations will require drafting of new provisions and the selection of appropriate arbitration rules and providers, it may be necessary to engage the services of external vendors and legal experts. Using third-party services will likely facilitate more efficient and timelier implementation of the relevant recommendations, but will result in increased costs to ICANN org.

Are there any security, stability or resiliency issues relating to the DNS?

None.

Is this decision in the public interest and within ICANN's mission?

This action is within ICANN's Mission and mandate and in the public interest as set forth in the ICANN Bylaws. The multistakeholder policy development process of bottom-up, consensus policies and guidelines help advance the stable and secure operation of the Internet's unique identifier systems.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

As required by the ICANN Bylaws and the GNSO's policy procedures, the recommendations were published for Public Comment as discussed above.

d. Further Consideration of the Issues Regarding the .GCC Application

Whereas, GCCIX, W.L.L. (the applicant for .GCC) initiated an Independent Review Process (.GCC IRP) challenging the ICANN Board's acceptance of Governmental Advisory Committee (GAC) consensus advice that the .GCC application should not proceed (GAC Advice).

Whereas, in light of certain findings in prior IRP final declarations, the Board **resolved to (/resources/board-material/resolutions-2021-09-12-en#2.b)** "authoriz[e] the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application."

Whereas, ICANN organization sought but was not granted a stay of the .GCC IRP; and ICANN org **asked (/en/system/files/correspondence/marby-to-ismail-09nov21-en.pdf)** the GAC Chair to open the "informal dialogue."

Whereas, the GAC Chair **responded (/en/system/files/correspondence/ismail-to-marby-25jan22-en.pdf)** to ICANN org, indicating that the GAC had reviewed "GAC discussions from 2013" and that the rationale for the GAC Advice was as follows (and as expressed in the **GAC Early Warning (https://gac.icann.org/work-products/public/gcc-ae-21010-2012-11-20.pdf?version=1&modificationDate=1353382663000&api=v2)**): (i) "The applied-for string (GCC) is an exact match of the known acronym for an Intergovernmental Organization (IGO), the Gulf Cooperation Council and as such, warrants special protection to its name and acronym."; and (ii) "The application clearly targeted the GCC community without any support from the GCC, its six members or its community."

Whereas, following a recommendation from the Board Accountability Mechanisms Committee (BAMC) in May 2022, the Board, in a **resolution (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.e)**: (a) "ask[ed] the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board's acceptance of that advice, and relevant related materials; and (b) ask[ed] the BAMC to provide the Board with recommendations regarding next steps."

Whereas, in furtherance of the Board's resolution, the BAMC reviewed and considered the GAC Advice, the .GCC application, and relevant related materials as set forth in the Rationale and the Reference Materials, and carefully considered and discussed what is in the public interest.

Whereas, the BAMC has recommended that the analysis of the GAC Advice and other issues relating to the .GCC application be conducted now, rather than waiting for the completion of the .GCC IRP, in light of certain findings in prior IRP declarations and for the sake of efficiency.

Whereas, the BAMC has further recommended that the Board reaffirm its acceptance of the GAC Advice and its decision to not proceed with the .GCC application based on the second issue identified in the GAC's rationale for the GAC Advice, based on information contained in other materials relevant to the .GCC application as set forth in the Rationale and the Reference Materials, and based on consideration of whether proceeding with the .GCC application is in the public interest.

Resolved (2023.04.30.11), the Board: (a) has analyzed the GAC Advice and other issues relating to the .GCC application, as well as the BAMC's recommendation; (b) reaffirms its acceptance of the GAC Advice and its decision to not proceed with the .GCC application based on the second issue identified in the GAC's rationale for the GAC Advice, based on the Board's evaluation of other materials relevant to the .GCC application, which are set forth in the Rationale and the Reference Materials, and based on the Board's determination that proceeding with the .GCC application is not in the public interest; and (c) directs the Interim President and CEO, or her designee(s), to continue to not proceed with the .GCC application.

Rationale for Resolution 2023.04.30.11

After careful review of the underlying facts, prior applicable Independent Review Process (IRP) final declarations and the importance of respecting ICANN's accountability mechanisms, information from the Governmental Advisory Committee (GAC), the public interest, materials relevant to the .GCC application, and the Board Accountability Mechanisms Committee's (BAMC) recommendations, the Board decided to conduct an independent analysis of the GAC consensus advice that the .GCC application should not proceed (GAC Advice) and other issues relating to the .GCC application now, rather than waiting for the completion of the *GCCIX, W.L.L. v. ICANN* IRP (.GCC IRP). After having conducted said analysis, the Board has reaffirmed its acceptance of the GAC Advice and its decision to not proceed with the .GCC application based on the concern raised in the GAC's rationale for the GAC Advice regarding lack of support and involvement from the relevant community, based on the Board's evaluation of the GAC Advice and other inputs and materials relevant to the .GCC application as set forth in this Rationale and the Reference Materials, and based on the Board's determination that proceeding with the .GCC application is not in the public interest. Accordingly, the Board has directed ICANN org's Interim President and CEO, or her designee(s), to continue to not proceed with the .GCC application.

Background Information

Additional background information regarding GCCIX, W.L.L.'s .GCC application, the objections to the .GCC application, the GAC Advice, the prior applicable IRP final declarations, and the current .GCC IRP initiated by GCCIX, W.L.L. (Claimant or GCCIX) can be found in the supporting Board materials for this Resolution and for Board Resolutions **2021.09.12.08 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-09-2021-en#2.b)** and **2022.06.12.18 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.e)**, and is incorporated herein by reference.

In furtherance of the Board's September 2021 **Resolution (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-09-2021-en#2.b)** "authoriz[ing] the President and CEO, or his designee(s), to seek a stay of the .GCC IRP and open an informal dialogue with the GAC regarding the rationale for the GAC consensus advice on the .GCC application," ICANN org sought a stay of the .GCC IRP and engaged in an informal dialogue with the GAC regarding the GAC Advice. ICANN org sent a **letter (/en/system/files/correspondence/marby-to-ismail-09nov21-en.pdf)** to the GAC Chair on 9 November 2021 to open the informal dialogue, seek input from the GAC regarding how it would like to engage with ICANN org in this dialogue, and asking whether the GAC would like to receive any additional information from ICANN org on the topic. As an initial response, the GAC requested that ICANN org provide some factual background to the GAC on the matter, which ICANN org did on 14 December 2021. The GAC discussed the matter on 14 December 2021 and on 20 January 2022.

On 25 January 2022, the GAC Chair sent a **letter (/en/system/files/correspondence/ismail-to-marby-25jan22-en.pdf)** to ICANN org indicating that the GAC had reviewed "GAC discussions from 2013 held in closed sessions at ICANN46 in Beijing on the .GCC application, which helped inform the language included in the Beijing Communiqué consensus advice text." In the letter, while acknowledging that the GAC did not provide a written rationale in the Beijing Communiqué for its advice relating to .GCC (properly noting that such a written rationale was not required to be included with the advice in 2013), the GAC Chair explained that: in November 2012, "the governments of Bahrain, Oman, Qatar and UAE issued a GAC Early Warning to the Applicant expressing serious concerns against the application"; in February 2013, "the GAC received requests from several GAC members (Bahrain, Oman, Qatar and UAE) as well as the Gulf Cooperation Council (GCC) to include '.GCC' in a GAC Objection Advice that the application should not proceed for the reasons highlighted in the GAC Early Warning"; and "that the GAC, during ICANN46 Beijing (April 2013) deliberated and reached consensus on 'GAC Objection Advice' [...] for the reasons expressed by the concerned GAC members" as follows (and as expressed in the **GAC Early Warning (https://gac.icann.org/work-products/public/gcc-ae-21010-2012-11-20.pdf?version=1&modificationDate=1353382663000&api=v2)**): (i) "The applied-for string (GCC) is an exact match of the known acronym for an Intergovernmental Organization (IGO), the Gulf Cooperation Council and as such, warrants special protection to its name and acronym."; and (ii) "The application clearly targeted the GCC community without any support from the GCC, its six members or its community."

Following a recommendation from the BAMC in May 2022, the Board passed a **resolution (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-12-06-2022-en#2.e)**: (a) "ask[ing] the BAMC to review, consider, and evaluate the underlying basis for the GAC consensus advice that the .GCC application should not proceed, the Board's acceptance of that advice, and relevant related materials; and (b) ask[ing] the BAMC to provide the Board with recommendations regarding next steps." In furtherance of the Board's resolution, the BAMC provided GCCIX with an opportunity to submit a response to the GAC's January 2022 communication (which the GCCIX submitted on 7 September 2022). As noted in further detail below, the BAMC proceeded to review, consider and evaluate the GAC Advice, the Board's acceptance of the GAC Advice, other inputs and materials relevant to the .GCC application, as well as what is in the public interest.

Discussion of the BAMC's Consideration and Recommendation

Pursuant to the Board's directive, the BAMC reviewed, considered and discussed the .GCC application, the GAC Advice, other relevant materials, and the public interest in order to be able to provide an informed recommendation to the Board. With regard to the .GCC application, of particular interest to both the BAMC and the Board were the statements in the **application (https://gtldresult.icann.org/applicationstatus/applicationdetails/179)** that:

- ".GCC is an open Top Level Domain (TLD) created specifically to enhance and develop the provision of Internet services for users in the Gulf and Middle East region."
- "We are committed to providing exemplary functional utility as well as an opportunity for Internet users with a connection to the Gulf and Middle East to secure a domain name in a new, innovative and competitive TLD."
- ".GCC will create a region-specific new TLD that allows previously excluded and disadvantaged users to take a stake in a meaningful cultural and economic tool that is specifically designed to respond to their linguistic, cultural and specific business needs."
- "GCC refers generally, but not exclusively, to the Cooperation Council for the Arab States of the Gulf. Formed in May 1981 as a regional organization, it consists of six Gulf countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Its main objectives are to enhance coordination, integration and inter-connection between its members in different spheres. This application is not connected with or sponsored by the Council. .GCC does not purport to represent the Council."
- ".GCC represents a strong competitive alternative to existing regional ccTLDs by providing instant registration and delegation under the most liberal framework permitted by law, within a TLD which has local significance."
- ".GCC will be a valuable digital asset dedicated [to] residents living and working in the region."
- .GCC is "[a] unique and meaningful three letter string."

The BAMC also considered the **public comments (https://gtldcomment.icann.org/applicationcomment/viewcomments)** regarding the .GCC application, as did the Board. While some of the comments were in support of a .GCC gTLD generally, the vast majority of comments were opposed to GCCIX's application for .GCC. For instance, the United Arab Emirates (UAE) stated that the application "is targeting the GCC community which basically covers the 6 member states of the GCC," but that the applicant "did not consult the targeted community in regards to launch of the proposed TLD, its strategy and policies." Likewise, a representative of Saudi Arabia stated that "[s]ince the applicant is not endorsed by the GCC or a majority of its members we strongly request ICANN not to accept this application." And several other commenters stated that the application is "sensitive" because "[t]he applicant (GCCIX WLL) is clearly not known as GCC and is not endorsed by the GCC (Gulf Cooperation Council)."

In addition, the BAMC and the Board considered the GAC **Early Warning (https://gac.icann.org/work-products/public/gcc-ae-21010-2012-11-20.pdf?version=1&modificationDate=1353382663000&api=v2)** stating that the governments of Bahrain, Oman, Qatar and United Arab Emirates, and the GCC, expressed "serious concerns" with Claimant's .GCC application. Of particular import were the statements that the .GCC application "[lacks] . . . community involvement and support" and that "the applicant did not consult the targeted community in regards to launch of the proposed TLD, its strategy and policies. The applicant did not obtain any endorsement from the GCC Secretariat General or any of its organizations, or any governmental or nongovernmental organization within the GCC member states."

The BAMC, and the Board, also reviewed the ICANN Independent Objector's (IO) comments regarding the .GCC application. In particular, the IO stated his "opinion that the applied for gTLD string explicitly targets the community of the Arab States of the Gulf, even if the applicant indicates that the application does not intend to represent the international organization itself." "[T]hat [since] five of the six governments as well as the international organization directly targeted by the gTLD expressed their disagreement with the application, it must be considered that there is an obvious and substantial opposition from a significant portion of the community." The IO also noted that use of a .GCC gTLD without the endorsement of the GCC or its member states could lead to confusion and "adverse effects on the mission pursued by the [GCC]" and "could interfere with the legitimate interests of the community of the [GCC], especially since the gTLD is not expected to be managed on behalf of the organization and its interests."

Ultimately, the IO chose not to file an objection to the .GCC application because "the Gulf Cooperation Council is an established institution representing and associated with a significant part of the targeted community. The Gulf Cooperation Council is already fully aware of the controversial issues and is better placed than the IO to file an objection, if it deems appropriate[,]" which the GCC did when it initiated a Legal Rights Objection (LRO) proceeding against GCCIX's .GCC application. Although the LRO filings of GCCIX and the GCC[17 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot17)] focused mainly on intellectual property rights, which are beyond the scope of the BAMC's and the Board's consideration, the filings provided some helpful insights. For instance, the GCC's LRO brief set forth the founding and history of the GCC as well as the GCC's view that use of .GCC by GCCIX could cause confusion and the impression that the GCC has endorsed the operation of the .GCC gTLD and/or the content on domains using the .GCC gTLD. In its LRO filing, GCCIX argued that it "does not expect confusion."

In addition, the BAMC and the Board further considered the **GAC Advice (https://gac.icann.org/contentMigrated/icann46-beijing-communique)** contained in the April 2013 Beijing Communiqué as well as the GAC's **25 January 2022 letter (/en/system/files/correspondence/ismail-to-marby-25jan22-en.pdf)**, which delineated the GAC's rationale for that advice. Of particular importance was the portion of the GAC's rationale that the .GCC "application clearly targeted the GCC community without any support from the GCC, its six members or its community," which is a view expressed in public comments on the .GCC application, in the GAC Early Warning on the .GCC application, and in the IO's comments on the .GCC application. Moreover, this view does not appear to have been meaningfully addressed by GCCIX in any of its communications to ICANN. For example, the BAMC and the Board considered several communications from GCCIX about its application, including: (i) GCCIX's **15 April 2013 letter (/en/system/files/correspondence/alshirawi-to-crocker-chalaby-15apr13-en.pdf)** to ICANN in response to the GAC Advice in the Beijing Communiqué; (ii) GCCIX's further **response (https://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1936-21010-en.pdf)** to the Beijing Communiqué, submitted on or around 10 May 2013; (iii) GCCIX's **Reconsideration Request 13-17 (/resources/pages/13-17-2014-02-13-en)**; and (iv) GCCIX's **7 September 2022 letter (/en/system/files/correspondence/rodenbaugh-to-burr-07sep22-en.pdf)** to ICANN regarding the GAC's 25 January 2022 letter. Despite these various communications that have spanned the past several years, as well as GCCIX's IRP filings, there has been no substantive response from GCCIX to the particular claim that the .GCC application is (and the selection of "GCC" for its applied-for string seems) aimed at attracting and engaging with members of the community represented by the GCC and its member states without the support of that community, the GCC, or the GCC member states, which represent approximately 60 million people in the Gulf and Middle East region.

The BAMC and the Board also considered materials relating to previous IRPs and to the current .GCC IRP. In particular, the IRP panels' findings in the .AFRICA and .AMAZON IRPs and their recommendations regarding the steps ICANN should have taken regarding GAC consensus advice that, when presented, did not include a written rationale, and regarding the independent analysis ICANN should have done in evaluating such advice. The BAMC and the Board also considered the actions ICANN took after the Final Declarations were issued in the .AFRICA and .AMAZON IRPs and evaluated the claims asserted by GCCIX in its Amended IRP Request. Specifically, GCCIX claims that: (i) ICANN should have sought from the GAC a rationale for the GAC Advice; (ii) that ICANN should have done an independent evaluation of that rationale; (iii) that ICANN should have provided GCCIX with treatment equal to that provided to similarly situated applicants, such as those for .AFRICA and .AMAZON; and (iv) that ICANN should provide a rationale for any action it takes on account of the GAC Advice regarding the .GCC application.

After extensive analysis and discussion, and after considering several options regarding the .GCC application, the BAMC has recommended that the independent analysis of the GAC Advice and other issues relating to the .GCC application be conducted now, rather than waiting for the completion of the .GCC IRP. Notwithstanding the fact that ICANN's acceptance of the GAC Advice in 2013 was consistent with the terms of Guidebook, two subsequent IRP panels have held that the Board should have conducted a further evaluation of the issues raised in the respective GAC Communiqués. In light of those findings, conducting such a further evaluation now in the .GCC matter is the prudent course of action, demonstrates the seriousness with which the Board considers ICANN's Accountability Mechanisms, and should allow the current IRP to proceed more efficiently. This is also in keeping with ICANN's Core Value to "remain accountable to the Internet community through mechanisms defined in [the] Bylaws that enhance ICANN's effectiveness."

The BAMC has further recommended that the Board reaffirm its acceptance of the GAC Advice and its decision to not proceed with the .GCC application based the second issue identified in the GAC's rationale for the GAC Advice (regarding lack of support and involvement from the relevant community), based on information contained in other inputs and materials relevant to the .GCC application as set forth in this Rationale and the Reference Materials, and based on consideration of whether proceeding with the .GCC application is in the public interest.

Consistent with certain of the concerns raised in the GAC Early Warning, in the GAC's rationale for the GAC Advice, in the IO's comments, as well as by members of the community, the BAMC and the Board note that GCCIX's .GCC application appears to be directly aimed at attracting and engaging with members of the community represented by the GCC and its member states without the support of that community, the GCC, or the GCC's member states. And, in fact, it is not a mere lack of support, the GCC and its member states have repeatedly objected to GCCIX's .GCC application. Moreover, the BAMC noted its concern that GCCIX's selection of the term "GCC" for its applied-for string seems intentional in order to attract (and/or will have the effect of attracting) the relevant community as a result of the association of the Gulf Cooperation Council with the "GCC" acronym and the reputation and goodwill that the GCC and its member states have developed through their representation of over 60 million people in the Gulf and Middle East region over the last forty years, despite the fact that the application is not sponsored or endorsed by the GCC or its member states. Indeed, the .GCC application explicitly states that its intention is to target Internet "users in the Gulf and Middle East." In addition, the BAMC and the Board agree with the IO's comment that this dichotomy between appearances and actual support could lead to confusion as to what entity or group is behind the .GCC gTLD and its content, and it could interfere with the legitimate interests, mission, and community outreach of the GCC and its member states because they do not endorse the .GCC gTLD and will have no role in evaluating or moderating its operation or content. While official "support" is not necessarily required by the Guidebook because "GCC" is not a geographic name, as defined in the Guidebook, the lack of support from the relevant community, the GCC, and the GCC member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) was relevant to both the BAMC's and the Board's analysis of whether this .GCC application is in the public interest.

The BAMC and the Board are committed to ICANN's Mission and Core Values as set forth in the Bylaws, including ensuring that this decision is in the public interest. The community most likely impacted by the proposed .GCC gTLD has voiced their concerns through the public comments received regarding the .GCC application, the GAC Early Warning and the GAC Advice regarding the .GCC application, correspondence, and the LRO materials, which "reflect [both] the interests of [the] affected parties and the roles of bodies internal to ICANN." In addition, the IO's comments as well as the GCC's own comments specifically note that use of .GCC by GCCIX could cause confusion and the false impression that the GCC has endorsed the operation of the .GCC gTLD and/or the content on domains using the .GCC gTLD. Potentially causing confusion for Internet users both within the relevant community as well as more broadly is not in the global public interest. Even more so when it appears that GCCIX intentionally chose the "GCC" string in an effort to benefit from the reputation and goodwill that the GCC and its member states have developed through their representation of over 60 million people in the Gulf and Middle East region over the last forty years. Similarly, ICANN's decisions should be guided by the Core Value of "recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities." Here, the GAC, through its GAC Advice and subsequent rationale supporting that advice, set forth its public policy position, and the Board is obligated under the Bylaws to consider the GAC's input as part of the Board's

independent evaluation of the .GCC application, the GAC Advice, and other relevant materials. For all of these reasons, the BAMC and the Board are of the view that proceeding with GCCIX's .GCC application is not in the public interest.

The BAMC's recommendations are consistent with the approach ICANN has taken regarding other gTLD applications that were lacking support in the communities targeted by the applications, such as .ISLAM, .HALAL and .PERSIANGULF. And these recommendations are generally consistent with the findings and recommendations in the .AFRICA and .AMAZON IRP Final Declarations as well as the actions taken by ICANN in addressing those IRP Final Declarations.

The BAMC also made clear that its recommendation to reaffirm acceptance of the GAC Advice is not based on the GAC's reference to intergovernmental organization (IGO) acronyms at the top-level. While the BAMC respects the GAC's view, the BAMC did not want or intend to recommend that the Board set any type of precedent regarding the level or source of IGO name and acronym protections in gTLDs, which has been and continues to be the subject of community-driven policy work.

Board Decision

The Board agrees with the BAMC's recommendations and reaffirms the Board's acceptance of the GAC Advice and its decision to not proceed with the .GCC application based on the concern raised in the GAC's rationale for the GAC Advice regarding lack of support and involvement from the relevant community, based on the Board's evaluation of the GAC Advice and other inputs and materials relevant to the .GCC application, which are set forth in this Rationale and the Reference Materials, and based on the Board's determination that proceeding with the .GCC application is not in the public interest. The Board also agrees that it is important to do this analysis now, rather than waiting for the .GCC IRP to be completed, because taking these steps is appropriate in light of certain findings in prior IRP final declarations and in light of ICANN's actions in response to those prior IRP declarations, and will benefit the community, including GCCIX, the GCC and the people it represents. This analysis, Resolution, and Rationale provides the parties and the .GCC IRP Panel with a complete picture of the BAMC and Board evaluation of the GAC Advice and the .GCC application, and these steps are generally consistent with the Board's actions in response to the .AFRICA and .AMAZON IRP Final Declarations and address several of the claims raised in the current .GCC IRP. Moreover, taking this action now is consistent with the purposes of the IRP, as set forth in ICANN's Bylaws, in that this action may narrow and focus the claims in the .GCC IRP, should avoid having multiple IRPs regarding the same application, and should lead to the just resolution of the claims in the .GCC IRP in the most efficient manner possible. In furtherance of the aim of limiting the issues in dispute in the .GCC IRP, the Board acknowledges, as did the GAC, that there was no written rationale for the GAC Advice in the Beijing Communiqué in 2013 and that the NGPC did not provide a written rationale when it accepted the GAC Advice beyond reliance on Section 3.1 of the Applicant Guidebook. The GAC has now detailed its rationale for the 2013 GAC Advice in its January 2022 letter and, in this Resolution and Rationale, the Board has described the independent analysis that the BAMC and the Board have conducted regarding the GAC Advice and the .GCC application.

The Board, in exercising its independent judgment, thinks that not proceeding with GCCIX's .GCC application is the right thing to do and is in the public interest. This view is based upon the Board's review, analysis, and discussion of the BAMC's analysis and recommendations, and the Board's independent analysis of the GAC Advice, the .GCC application and other materials relevant to the .GCC application, and what is in the public interest, while taking into consideration the Mission and Core Values set forth in ICANN's Bylaws.

Based on the Board's review and analysis of GCCIX's .GCC application, public comments regarding the .GCC application, the GAC Early Warning regarding the .GCC application, the IO's comments on the .GCC application, the available LRO filings, the GAC Advice in the Beijing Communiqué, the GAC's 25 January 2022 letter to ICANN regarding the Beijing Communiqué, and various communications from GCCIX to ICANN (including GCCIX's 15 April 2013 letter to ICANN in response to the GAC Advice; GCCIX's further response to the Beijing Communiqué, submitted on or around 10 May 2013; GCCIX's Reconsideration Request 13-17; and GCCIX's 7 September 2022 letter to ICANN regarding the GAC's 25 January 2022 letter), GCCIX's .GCC application appears to be directly aimed at attracting and engaging with members of the community represented by the GCC and the GCC member states (as stated in GCCIX's .GCC application) without the support of that community, the GCC, or the GCC's member states. And it is noteworthy that it is not a mere lack of support; the GCC and its member states have repeatedly objected to GCCIX's .GCC application. While official "support" is not necessarily required by the Guidebook because "GCC" is not a geographic name as defined in the Guidebook, the lack of support from the relevant community, the GCC, and the GCC member states is relevant to the Board's analysis of whether or not ICANN should proceed with this .GCC application.

Based on consideration of these materials, it also appears that GCCIX's selection of the "GCC" string is intended to attract, and/or will have the effect of attracting, the relevant community as a result of the association that the Gulf Cooperation Council and its member states have with the "GCC" acronym and the region within which the GCC operates. Further, GCCIX's selection of .GCC also appears to capitalize on the reputation and goodwill that the GCC and its member states

have developed through their representation of over 60 million people in the Gulf and Middle East region over the last 40 years, even though the application is not sponsored or endorsed by the GCC or its member states.

Based on its analysis of these materials, the Board believes that this dichotomy between appearances and actual support could lead to confusion and could create the false impression that the GCC and its member states have endorsed the operation of the .GCC gTLD and/or the content of domains using the .GCC gTLD, which the GCC and its member states have not done. In addition, this confusion could interfere with the legitimate interests, mission, and community outreach of the GCC and its member states since they do not endorse or support, and in fact have objected to, this .GCC application and will have no role in evaluating or moderating its operation or content, as mentioned in the IO's comments on the .GCC application.

The Board takes this action based not only on its due diligence and care in reviewing the relevant materials, but also on its adherence to ICANN's Mission, Commitments, and Core Values set forth in the Bylaws, including ensuring that this decision is in the public interest and that it respects the concerns raised by the community likely impacted by the proposed .GCC gTLD. The Board is of the view that proceeding with GCCIX's .GCC application is not in the public interest.

This action is consistent with the approach ICANN has taken with regard to other gTLD applications that were lacking support in the communities specifically targeted by the applications, such as .ISLAM, .HALAL and .PERSIANGULF. Further, this action is generally consistent with certain findings and recommendations in the .AFRICA and .AMAZON IRP Final Declarations as well as the actions taken by ICANN in addressing those IRP Final Declarations. Moreover, this action addresses several of GCCIX's claims in the current .GCC IRP, including its claims that ICANN should have sought from the GAC a written rationale for the GAC Advice, should have done an independent evaluation of that rationale, should have provided GCCIX with treatment equal to that provided to similarly situated applicants (such as .AFRICA and .AMAZON), and should provide a rationale for any action it takes on account of the GAC Advice regarding the .GCC application.

To be clear, however, the Board is not basing its decision to reaffirm acceptance of the GAC Advice on the GAC's reference to IGO acronyms at the top-level. While the Board respects the GAC's view, the Board does not want or intend to set any type of precedent regarding the level or source of IGO name and acronym protections in gTLDs, which has been and continues to be the subject of community-driven policy work.

Taking the decision to continue to not proceed with GCCIX's .GCC application, after reviewing and considering the aims of the application, the materials relevant to the application, and the objections of those most likely to be impacted by a .GCC gTLD, is in the public interest and reflects the Board's adherence to ICANN's Mission, Commitments, and Core Values as set forth in the Bylaws.

More specifically with regard to ICANN's Core Values as set forth in the Bylaws, this decision takes into consideration the broad, informed participation of the Internet community and those members most affected, it respects ICANN's Accountability Mechanisms, and it recognizes the concerns expressed by the countries and entities representing the majority of the affected community (noted in the Bylaws applicable to the .GCC IRP, **https://www.icann.org/resources/pages/bylaws-2012-02-25-en (/resources/pages/bylaws-2012-02-25-en)**; and similarly reflected in the current Bylaws, **https://www.icann.org/resources/pages/governance/bylaws-en (/resources/pages/governance/bylaws-en)**):

- Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
- Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
- Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
- While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

While the Board strives to follow all the Core Values in making its decisions, it is also the Board's duty to exercise its independent judgment to determine if certain Core Values are particularly relevant to a given situation. And, in fact, the Bylaws anticipate and acknowledge that ICANN may not be able to comply with all the Core Values in every decision made and allows for the Board to exercise its judgment in the best interests of the Internet community: "...because [the Core Values] are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values." (Bylaws, **https://www.icann.org/resources/pages/bylaws-2012-02-25-en (/resources/pages/bylaws-2012-02-25-en)**.)

Taking this decision is within ICANN's Mission as the ultimate result of ICANN's consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board's decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding new gTLD disputes, respecting ICANN's accountability mechanisms and advisory committees, recognizing the input received from the Internet community, and abiding by the policies and procedures set forth in the Guidebook, which were developed through a bottom-up consensus-based multistakeholder process over numerous years of community efforts and input, and is consistent with ICANN's Core Values.

Taking this decision is not expected to have any immediate direct financial impact on the ICANN organization and will not have any direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

e. Further Consideration of the Afilias Domains No. 3 Ltd. v. ICANN (.WEB) Independent Review Process Final Declaration

Whereas, on 16 January 2022, the Board considered the Final Declaration in the Afilias Domains No. 3 Ltd. (Altanovo)[18 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot18)] v. ICANN Independent Review Process regarding .WEB (.WEB IRP) and, in part, resolved that further consideration was needed regarding the IRP Panel's non-binding recommendation.

Whereas, pursuant to its 16 January 2022 **resolution (/en/board-activities-and-meetings/materials/approved-board-resolutions-special-meeting-of-the-icann-board-16-01-2022-en#2.b)**, the Board asked the Board Accountability Mechanisms Committee (BAMC) to review, consider, and evaluate the IRP Panel's Final Declaration and recommendation, and to provide the Board with its findings to consider and act upon before the organization takes any further action toward contracting for or delegation of .WEB.

Whereas, the BAMC complied with the Board's request and recommended next steps related to the .WEB applications.

Whereas, on 10 March 2022, the Board considered the BAMC's recommendation, as well as the relevant related materials, and **resolved (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-10-03-2022-en#2.c)** to: (a) ask the BAMC to review, consider and evaluate the claims relating to the Domain Acquisition Agreement (DAA) between Nu Dotco LLC (NDC) and Verisign, Inc. and the claims relating to Altanovo's conduct during the Auction Blackout Period; (b) ask the BAMC to provide the Board with its findings and recommendations as to whether the alleged actions of NDC and/or Altanovo warrant disqualification or other consequences, if any, related to any relevant .WEB application; and (c) direct ICANN organization to continue refraining from contracting for or delegation of .WEB until ICANN has made its determination regarding the .WEB application(s).

Whereas, in furtherance of that resolution, the BAMC requested that Altanovo, NDC and Verisign provide comprehensive written summaries of their claims and the materials supporting their claims, which they did in July and August 2022.

Whereas, after the BAMC reviewed and considered the parties' July/August 2022 **submissions (/resources/pages/irp-afilias-v-icann-2018-11-30-en)** and supporting materials, as well as relevant related materials, and discussed the matter extensively, the BAMC recommended that the Board: (a) determine that NDC did not violate the Guidebook or the Auction Rules, either through entering into the DAA or through its participation in the .WEB auction; (b) direct the Interim President and CEO, or her designee(s), to continue processing NDC's .WEB application; and (c) in light of the above, conclude that is not necessary to make a final determination at this time as to whether Altanovo violated the "Blackout Period" of the .WEB auction.

Whereas, noting the questions raised regarding certain conduct by both both NDC and Altanovo, the BAMC further recommended that the Board direct the Interim President and CEO, or her designee(s), to carefully consider the issues raised by the parties and the Panel in the .WEB IRP with regard to agreements similar to the DAA and communications prior to an ICANN auction when developing the Guidebook and auction rules for the next round of the New gTLD Program in order to provide greater clarity to applicants regarding the transparency and notification requirements throughout the application and auction processes.

Resolved (2023.04.30.12), the Board hereby: (a) determines that NDC did not violate the Guidebook or the Auction Rules, either through entering into the DAA or through its participation in the .WEB auction; (b) directs the Interim President and CEO, or her designee(s), to continue processing NDC's .WEB application; and (c) in light of the above, concludes that is not necessary to make a final determination at this time as to whether Altanovo violated the "Blackout Period" of the .WEB auction.

Resolved (2023.04.30.13), the Board hereby notes the questions raised regarding certain conduct by both NDC and Altanovo and directs the Interim President and CEO, or her designee(s), to carefully consider the issues raised by the parties and the Panel in the .WEB IRP with regard to agreements similar to the DAA and communications prior to an ICANN auction when developing the Guidebook and auction rules for the next round of the New gTLD Program in order to provide greater clarity to applicants regarding the transparency and notification requirements throughout the application and auction processes.

Resolved (2023.04.30.14), specific items within this resolution shall remain confidential pursuant to Article 3, section 3.5(b) of the ICANN Bylaws unless and until the Interim President and CEO, or her designee(s), determines that the confidential information may be released.

Rationale for Resolutions 2023.04.30.12 – 2023.04.30.14

After careful review of the underlying facts, the submissions and supporting materials provided by Altanovo Domains Limited (Altanovo),[19 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot19)] Nu Dotco LLC (NDC) and Verisign, Inc. in July and August 2022, including, but not limited to, the Domain Acquisition Agreement (DAA) between NDC and Verisign and affiliated documents, NDC's .WEB application, relevant provisions of the Guidebook, Auction Rules and Bidder Agreement, and various other materials, as well as the Board Accountability Mechanisms Committee's (BAMC) analysis and recommendations, the Board has determined that NDC did not violate the Guidebook or the Auction Rules, either through entering into the DAA or through its participation in the .WEB auction. In addition, and in light of the above determination, the Board has also concluded that it is not necessary to make a final determination at this time as to whether Altanovo violated the "Blackout Period" of the .WEB auction.

The Board, however, does note the claims asserted regarding NDC's non-disclosure of its arrangement with Verisign and regarding Altanovo's communications prior to the ICANN auction and, thus, has directed ICANN organization to carefully consider such issues when developing the Guidebook and the auction rules for the next round of the New gTLD Program. It would be beneficial to both the applicants and the application process as a whole to provide greater clarity in the next iteration of the Guidebook and auction rules regarding the transparency and notification requirements throughout the application and auction processes, in particular with regard to proposed registry agreement assignments and/or arrangements similar to the DAA as well as communications during the Blackout Period.

Background Information

Additional background information regarding the .WEB applications and the .WEB auction, the Independent Review Process initiated by Altanovo (.WEB IRP), and the IRP Panel's Final Declaration can be found in the Resolution, Rationale and supporting Board materials for Board Resolutions **2022.01.16.12 - 2022.01.16.15 (/en/board-activities-and-meetings/materials/approved-board-resolutions-special-meeting-of-the-icann-board-16-01-2022-en#2.b)** and **2022.03.10.06 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-10-03-2022-en#2.c)**, and is incorporated herein by reference.

The .WEB Auction and the DAA:

Seven applicants submitted applications for the right to operate .WEB, including Altanovo and NDC. The members of the .WEB contention set did not privately resolve contention; accordingly, the applicants went to an ICANN auction of last resort. An auction was held on 27-28 July 2016, which concluded with NDC prevailing with a bid of US$135 million. Shortly thereafter, Verisign publicly disclosed (through both a press release and a filing with the Securities and Exchange Commission) that, pursuant to an agreement it had entered with NDC, Verisign provided the funds for NDC's auction bid in exchange for, among other things, NDC's future assignment of the .WEB registry agreement to Verisign, subject to ICANN's consent.

The commitment Verisign referenced arose out of an agreement between NDC and Verisign known as the Domain Acquisition Agreement (DAA). The DAA "[Redacted-Confidential Information]" subject to ICANN's consent to an assignment request regarding the Registry Agreement.

Under the terms of the DAA, NDC agreed that it "[Redacted-Confidential Information]," that it "[Redacted-Confidential Information]" and that it will not "[Redacted-Confidential Information]."

NDC and Verisign agreed that "[Redacted-Confidential Information]."

Upon learning of an agreement between Verisign and NDC, Altanovo sent ICANN a letter asking ICANN to disqualify NDC's .WEB application and its bid for .WEB, and award .WEB to Altanovo as the next highest bidder. ICANN undertook an initial investigation, which was followed by a

competition investigation by the United States Department of Justice Antitrust Division (DOJ). The DOJ process took approximately a year and a half. In early 2018, the DOJ closed its investigation and took no action. Thereafter, ICANN proceeded to the contracting phase with NDC for .WEB.

IRP Panel Final Declaration:

Altanovo initiated the .WEB IRP in November 2018, alleging that NDC had violated the Guidebook and/or Auction Rules as a result of its arrangement with Verisign, and that ICANN had violated the Bylaws by failing to disqualify NDC. NDC and Verisign asked to participate as *amici curiae* in the IRP, which the Panel granted. The merits hearing took place on 3-11 August 2020, and the IRP Panel issued its Final Declaration on 20 May 2021, which the Panel later corrected for certain typographical errors, effective 15 July 2021. Altanovo then filed a further challenge to the Final Declaration, which the Panel denied in its entirety in December 2021, at which time the Final Declaration was deemed "final."

In its Final Declaration, the Panel accepted Altanovo's claim that ICANN violated provisions in its Articles of Incorporation (Articles) and Bylaws by proceeding toward entering a Registry Agreement with NDC without having reached a determination about whether the DAA or NDC's conduct warranted rejection of NDC's application for .WEB. The Panel also found that ICANN violated its Bylaws' obligation to operate in an open and transparent manner and consistent with procedures to ensure fairness by not advising Altanovo of the ICANN Board's choice in November 2016 to defer consideration of the .WEB matter while an Accountability Mechanism regarding .WEB was pending.

The Panel, however, denied Altanovo's requested relief that the Panel issue a binding declaration that ICANN must disqualify NDC's bid for .WEB, that the Panel specify a winning bid price, and that the Panel order ICANN to proceed with contracting for .WEB with Altanovo. The Panel found that the questions raised by Altanovo were "serious and deserving of [ICANN's] consideration," but the Panel expressed no view as to the proper resolution of those questions. Instead, the Panel found that the resolution of those questions is a matter within the discretion of ICANN. The Panel noted that: "it is for [ICANN], that has the requisite knowledge, expertise, and experience, to pronounce in the first instance on the propriety of the DAA under the New gTLD Program Rules, and on the question of whether NDC's application should be rejected and its bids at the auction disqualified by reason of its alleged violations of the Guidebook and Auction Rules."

The Panel also stated that it "accepts the submission that ICANN does not have the power, authority, or expertise to act as a competition regulator by challenging or policing anticompetitive transactions or conduct." The Panel further noted that "[c]ompelling evidence to that effect" was presented by several of the ICANN witnesses at the final hearing, and "it is consistent with a public statement once endorsed by [Altanovo], in which it was asserted [that] '[...] Neither ICANN nor the GNSO have the authority or expertise to act as anti-trust regulators.'"

Board Resolutions and BAMC Review:

Once the Final Declaration became "final," after resolution of Afilias' separate request for "interpretation and correction" (which the Panel determined was "frivolous") on 21 December 2021, the Board considered the Final Declaration at its 16 January 2022 meeting. The Board acknowledged the Panel's findings, directed payment to Altanovo of the amount set forth by the Panel, and determined that further consideration of the Panel's recommendation was needed. Accordingly, the Board asked the BAMC to "review, consider, and evaluate the IRP Panel's Final Declaration and recommendation, and to provide the Board with its findings to consider and act upon before the organization takes any further action toward contracting for or delegation of .WEB."

After conducting its initial review of the IRP Panel's Final Declaration and recommendation, and related materials, the BAMC recommended that the Board: (a) ask the BAMC to review, consider and evaluate the claims relating to the DAA, and the claims relating to Altanovo's conduct during the Auction Blackout Period; (b) ask the BAMC to provide the Board with its findings and recommendations as to whether the alleged actions of NDC and/or Altanovo warrant disqualification or other consequences, if any, related to any relevant .WEB application; and (c) direct ICANN organization to continue refraining from contracting for or delegation of .WEB until the Board has made its determination regarding the .WEB application(s).

As set forth in Board Resolution **2022.03.10.06 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-10-03-2022-en#2.c)**, the Board agreed with the BAMC's recommendation and noted that, "in light of certain of the Panel's determinations, it is appropriate and prudent for ICANN to undertake an analysis of the allegations regarding the DAA as well as the allegations regarding the Auction Blackout Period in order to determine if any consequences are warranted with respect to any of the .WEB applications" before proceeding further.

In furtherance of the Board's Resolution, the BAMC **requested (/en/system/files/correspondence/burr-to-ali-et-al-19may22-en.pdf)** that the interested parties (Altanovo, NDC and Verisign) "provide a comprehensive written summary of their claims and the materials supporting their claims." On 29 July 2022, Altanovo and NDC/Verisign provided

their initial submissions. Altanovo also submitted two supporting declarations with its submission. On 29 August 2022, Altanovo submitted its reply submission, and NDC/Verisign submitted their reply submission along with two supporting declarations.

The BAMC reviewed and considered the submissions and supporting materials including, but not limited to, the DAA and affiliated documents, NDC's .WEB application, relevant provisions of the Guidebook, Auction Rules and Bidder Agreement, and various other materials. The BAMC carefully considered the parties' positions and supporting materials, and the BAMC extensively discussed the matter and options regarding next steps relating to the .WEB gTLD during at least four separate meetings.

Summary of the Parties' Positions

The following is a summary of the parties' positions but does not capture the entirety of their positions, which are set forth in their submissions to the BAMC and are available on ICANN's **.WEB IRP webpage (/resources/pages/irp-afilias-v-icann-2018-11-30-en)**.

Altanovo's Position Regarding the .WEB Auction and the DAA:

Altanovo contends that the gTLD application process is designed to promote fairness, transparency and non-discrimination and that it requires key parts of each application to be posted for a public comment period, which guarantees that other applicants and the Internet community at large know what entity is applying for a gTLD and the purpose for which it is sought and have an opportunity to comment on the application. Altanovo claims that transparency is required so that all applicants know who they are competing against. Altanovo argues that the DAA "decimate[s] [the] fundamental principles underlying the New gTLD Program" and that, according to Altanovo, "the DAA was specifically designed to evade and subvert the most basic purposes that the Program was meant to serve." Further, Altanovo argues that, by submitting an application to ICANN through the New gTLD Program, the applicant enters into a contract with ICANN; and that ICANN enters into these contracts and promulgates the rules in the Guidebook to carry out its Mission on behalf of the Internet community as a whole.

Altanovo argues that the Guidebook prohibits the sale, assignment, or transfer of "any of applicant's rights or obligations in connection with the application," referencing Paragraph 10 of Module 6 of the Applicant Guidebook, which states:

> Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

Altanovo argues that this provision is not merely limited to the total sale or transfer of an application but, rather, prohibits the transfer of individual rights or obligations in an application. And, according to Altanovo, the DAA constituted a resale, assignment and/or transfer of several of NDC's individual rights and/or obligations relating to its .WEB application.

Specifically, Altanovo asserts that NDC transferred to Verisign the right and obligation to negotiate and enter into a Registry Agreement with ICANN and to operate .WEB because the terms of the DAA require that NDC "[Redacted-Confidential Information]" and to "[Redacted-Confidential Information]" before executing the Registry Agreement with ICANN. According to Altanovo, the "most basic right under a gTLD application is . . . the applicant's opportunity to operate the applied-for registry," but the DAA operates as [Redacted-Confidential Information], citing to the portion of the DAA that indicates that, [Redacted-Confidential Information].

Altanovo argues that NDC also transferred to Verisign its right to participate in the .WEB auction on its own behalf by agreeing that it would do so only upon "[Redacted-Confidential Information]." Altanovo also argues that NDC transferred this right by agreeing to participate in the auction "[Redacted-Confidential Information]" and "[Redacted-Confidential Information]." According to Altanovo, each and every bid at the .WEB auction was made "[Redacted-Confidential Information]" and from Verisign's headquarters.

Altanovo disagrees with NDC/Verisign's contention that the DAA comprises a "future" assignment of rights because Verisign exercised its then-existing rights to "[Redacted-Confidential Information]," and to "[Redacted-Confidential Information]." Verisign, according to Altanovo, also controlled NDC's bids at the ICANN Auction.

Altanovo also contends that "virtually all" of the information in NDC's application became untrue, inaccurate, and incomplete when NDC entered into the DAA and "deprived" the Internet community of the ability to submit public comments on Verisign's involvement in .WEB. For instance, in Section 18 (Mission/Purpose) of the application, NDC stated that "[p]rospective users benefit from the long-term commitment of a proven executive team that has a track-record of building and successfully marketing affinity TLD's," and that NDC plans to implement "a very similar strategy for .WEB to the one that it used for .CO." But, according to Altanovo, that was no longer accurate once the DAA was signed because, under the DAA, there was no circumstance where NDC could operate .WEB. Thus, the mission and purpose, including the "long-term commitment of a proven executive team," became an "outright lie," according to Altanovo. Altanovo asserts that this information was published for the members of the Internet community so that they can understand who is applying for a given gTLD, regardless of whether Section 18 is part of ICANN's evaluation. Altanovo contends that this is the reason that Paragraph 1 of the Applicant Guidebook requires applicants to notify ICANN of "any change in circumstances that would render any information in the application false or misleading."

Position of NDC and Verisign Regarding the .WEB Auction and the DAA:

NDC and Verisign claim that Altanovo has lodged a series of attacks designed to disqualify NDC from the .WEB contention set since even before the .WEB auction, and the IRP was yet another such attack. NDC and Verisign also note that Altanovo sought to exclude NDC and Verisign from participating in the IRP while simultaneously asking the IRP Panel to disqualify NDC and its .WEB application. NDC and Verisign contend that Altanovo's proposed relief and proposed reading of the Guidebook are "draconian" and "would create uncertain and destabilizing precedent far beyond this matter." For instance, they assert that ICANN is bound by the Bylaws to act in a non-discriminatory manner, and that awarding Altanovo the relief it seeks would amount to singling out NDC and Verisign because ICANN has approved hundreds of assignments of Registry Agreements, some similar to the assignment envisioned by the DAA, including assignments that change the mission and purpose of the original application. They further claim that numerous applicants have entered into agreements with third parties and that ICANN has never disqualified an applicant on that basis.

NDC and Verisign argue that Paragraph 10 of Guidebook Module 6 does not apply to the DAA because the paragraph only prohibits the sale of a total application itself; it does not address agreements, such as the DAA, "to support an application, finance a resolution of a contention set, or assign a registry agreement post-delegation (upon consent of ICANN)." NDC and Verisign argue that the DAA did not transfer NDC's rights or obligations under the application to Verisign. The DAA contemplates only "a possible, contingent, future assignment of the registry agreement following (i) resolution of the contention set, (ii) execution of a registry agreement, and (iii) ICANN's consent to the assignment." Moreover, the DAA confirmed that NDC did not need Verisign's consent to "[Redacted-Confidential Information]."

According to NDC and Verisign, the DAA fails to meet the legal elements for an assignment, which requires "(1) a specific *intention* to make (2) a *present transfer of ownership* of the application, and (3) the transferor have *no remaining interest* in the application." Instead, the Confirmation of Understanding (a subsequent agreement dated 26 July 2016 between NDC and Verisign relating to the DAA) states that the parties "[Redacted-Confidential Information]"; and that NDC does not need Verisign's consent to "[Redacted-Confidential Information]." NDC and Verisign argue that the only transfer contemplated by the DAA was a future, conditional assignment of a Registry Agreement.

NDC and Verisign also rely upon the Auction Rules, which they contend implicitly authorize agreements such as the DAA. The Auction Rules state that pre-auction agreements regarding post-auction ownership transfer arrangements cannot be discussed during the Blackout Period, impliedly permitting such arrangements to be discussed at other times. Finally, NDC and Verisign argue that when drafting the Applicant Guidebook, ICANN "rejected" a proposal to limit agreements for post-delegation assignments of Registry Agreements, which further confirms that the Guidebook was not intended to limit these assignments.

NDC and Verisign argue that NDC made the bids for itself as the applicant, and that the DAA provisions to which Altanovo cites [Redacted-Confidential Information]. For instance, [Redacted-Confidential Information]. Further, NDC and Verisign claim that not only do the Auction Rules not govern the extent to which an applicant may obtain third-party financing for an auction, but Altanovo even admitted that it received a loan for its participation in the .WEB auction, much like other participants in both private auctions and other ICANN auctions.

NDC and Verisign further contend that NDC is still the applicant for .WEB, and that NDC may become the registry operator because Verisign's rights under the DAA are subject to numerous contingencies. For instance, Verisign could terminate the DAA "[Redacted-Confidential Information]," which would allow NDC to operate .WEB. NDC also could breach the DAA and keep the .WEB registry for itself (even if that action would carry its own consequences). Additionally, if ICANN did not consent to the assignment, NDC and Verisign could modify the DAA such that NDC would remain the registry operator.

NDC and Verisign further contend that new gTLDs have been transferred "hundreds of times post-delegation," and that "ICANN has never objected or refused to consent to an assignment on the grounds that: (i) the pre-delegation agreement provided for a post-delegation assignment of the registry agreement, and/or (ii) there was a lack of pre-delegation public scrutiny of the registry operator because the assignment was effected after the application evaluation period had closed."

NDC and Verisign argue that ICANN has never applied the Guidebook in the manner proposed by Altanovo, and that new gTLDs have been transferred numerous times after execution of a Registry Agreement. NDC and Verisign refer to Christine Willett's testimony at the IRP hearing that "'applicants all the time were assigning rights and designating third parties to operate on their behalf,' with respect to 'all sorts of aspects of their application and future gTLD operations,' including assigning new gTLDs immediately upon execution of the registry agreement."

NDC and Verisign argue that the DAA did not render any statements in the application false or misleading. NDC and Verisign contend that ICANN is generally unconcerned with third-party agreements like the DAA and only is concerned with the ownership, management, and contact personnel for the applicant. The representations regarding NDC's ownership, management, and contact personnel remain accurate.

Additionally, NDC and Verisign argue that there were no changes to Section 18 (Mission/Purpose) of the application about which NDC was required to notify ICANN. The DAA did not alter the mission or purpose as stated in NDC's application, where NDC described "its general strategy at the time [in 2012] as to how .WEB might be successfully and productively introduced and used to benefit consumers." That general strategy was not "intended to be a definitive statement of NDC's plans for .WEB," and, according to NDC and Verisign, they were not "required to be" definitive statements under the Guidebook. NDC and Verisign further contend that any purported inaccuracy in Section 18 is immaterial because Module 2 of the Guidebook states that the information provided in response to Question 18 "is not used as part of the evaluation or scoring of the application."

Allegations regarding the .WEB Auction Blackout Period:

Clause 68 of the Auction Rules and Sections 2.6 and 2.10 of the Bidder Agreement prohibit members of a contention set from, among other things, "cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements" during the period from the deposit deadline for the auction until full payment has been received from the auction winner. This is referred to as the "Blackout Period." According to NDC and Verisign, an agreement had been reached to resolve .WEB through a "private auction" by all members of the contention set except NDC, which refused to participate in a private auction. The proposed private auction would have been structured so that the proceeds of the winning bid would be distributed to the losing bidders. On 7 June 2016, a representative of Altanovo asked NDC to reconsider entering into a private auction and offered to guarantee that NDC would receive at least $16 million if NDC participated in a private auction and lost. NDC declined. Altanovo offered to increase the guaranteed payment to $17.02 million. NDC declined again.

On 20 July 2016, the deposit deadline for the .WEB action passed, and the Blackout Period began. On 22 July 2016, Altanovo sent a text message to NDC stating:

> If ICANN delays the auction next week would you again consider a private auction? Y-N

NDC did not respond to the text message. NDC and Verisign contend that Altanovo's communication violated the Blackout Period.

NDC and Verisign argue that Altanovo's 22 July 2016 message asking if NDC would consider a private auction in the event that the .WEB auction were to be postponed amounted to seeking a "settlement of" the .WEB contention set in breach of paragraph 68 of the Auction Rules and Section 2.6 of the Bidder Agreement. They argue that the text message "unambiguously referred back to Altanovo's prior attempts days earlier to induce NDC to agree to a private auction for .WEB by guaranteeing NDC over $17 million to go to such an auction and lose." NDC and Verisign further argue that Altanovo's text message also intended to probe NDC's strategies for the upcoming auction, which NDC and Verisign contend the Bidder Agreement prohibits.

Altanovo argues that the first two texts NDC and Verisign identified occurred six weeks prior to the Blackout Period, and that while the 22 July 2016 text occurred during the Blackout Period, it did not violate any rules. According to Altanovo, the Blackout Period is "designed to prevent bid rigging by prohibiting bidders from coordinating in advance of the auction." According to Altanovo, its text message did not seek to coordinate or otherwise rig auction bids and did not violate the terms or spirit of the Blackout Period; and the text did not relate to bids, bidding strategies, settlement agreements or post-Auction ownership transfer agreements.

Parties' Request for Remedies:

The parties' submissions propose radically different remedies in the event the Board were to find a violation of the Guidebook or Auction Rules, notwithstanding the fact that the IRP Panel found that the Guidebook and Auction Rules provide ICANN with considerable discretion to address and to remedy breaches of their terms.

Altanovo contends that, if a violation is found, the Articles and Bylaws require the Board to exercise its discretion to disqualify NDC's application/bids and deem NDC ineligible to enter into a Registry Agreement for .WEB, based on Guidebook Module 6 (which provides that ICANN may reject an application if an applicant makes a "material misstatement or misrepresentation" in the application or omits any "material information" from the application). Altanovo further argues that its bid (which was the second highest bid) should be declared the winning bid because certain provisions of the Auction Rules indicate that a bidder may be subject to various penalties, including forfeiture of its application, and that ICANN may make a determination that a winning applicant is "ineligible" to enter into a Registry Agreement.

NDC's and Verisign's overarching theme is that granting Altanovo the relief it seeks would amount to treating NDC and Verisign differently from all other similarly situated new gTLD applicants that have assigned their Registry Agreements to third parties, or otherwise entered into financing agreements related to their applications. NDC and Verisign further argue that Altanovo's argument implies that the Board has no discretion but to award Altanovo its "draconian" relief, thereby resulting in Altanovo obtaining the right to operate .WEB for "far less than its market value." NDC and Verisign, however, assert that Altanovo's argument is contrary to the Guidebook and the IRP Panel's Final Declaration, which held that ICANN has "the requisite knowledge, expertise, and experience to pronounce . . . on the question of whether NDC's application should be rejected and its bid at the auction disqualified."

NDC and Verisign also argue that, even if the DAA violated Paragraph 10 of the Guidebook, forfeiture is not the appropriate remedy and is inconsistent with how ICANN has interpreted Paragraph 10 in the past. Moreover, the fundamental purpose of Paragraph 10 is to ensure that the applicant continues to have responsibility for the application, and the DAA did not interfere with that fundamental purpose, according to NDC and Verisign. As to the alleged violation of NDC's disclosure obligations, again NDC and Verisign argue that the remedy cannot be forfeiture, in part because there is no evidence that the result of the .WEB auction would have been different had the arrangement been disclosed. And conceding to Altanovo's demand "would be singling out NDC for disqualification based on the same conduct by other applicants for which ICANN took no action." Finally, NDC and Verisign argue that the alleged violations of the Auction Rules or the Bidder Agreement cannot support forfeiture because they relate only to the mechanics of the ICANN Auction, and the DAA did not interfere with those mechanics.

Discussion of the BAMC's Consideration and Recommendation

Pursuant to the Board's directive in **Resolution 2022.03.10.06 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-10-03-2022-en#2.c)**, the BAMC, and then the Board, considered various materials relevant to this matter including, but not limited to, the IRP Panel's Final Declaration and the submissions and supporting materials submitted to the BAMC in July and August 2022 by Altanovo, NDC and Verisign.

After careful review of and discussion regarding the Guidebook and Auction Rules, the BAMC, and the Board, found that there is no Guidebook or Auction Rules provision that directly addresses arrangements such as the DAA, despite the parties' respective contentions. The BAMC believes, and the Board agrees, that the DAA falls into a gray area that the Guidebook and Auction Rules do not specifically address. Thus, while both sides make plausible arguments, none of those arguments exactly fits the DAA and the parties' conduct under the current Guidebook and Auction Rules.

More specifically, the BAMC and the Board found that the DAA does not violate Paragraph 10 of the Guidebook, including the last sentence, which states that "Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the Application." NDC remains the applicant of its .WEB application because NDC did not sell or transfer the application. While NDC has agreed that the DAA grants Verisign various rights with respect to how NDC proceeds, including with respect to [Redacted-Confidential Information], NDC did not resell, assign, or transfer its rights or obligations with regard to the .WEB application itself, and retained the right to communicate with ICANN and to provide information "[Redacted-Confidential Information]." In the event NDC negotiates with and enters into a Registry Agreement with ICANN for .WEB, NDC would become the Registry Operator for .WEB. Only after NDC secures a Registry Agreement (if it does) can NDC then submit a request to ICANN to have the agreement assigned to Verisign.

Accordingly, the BAMC and the Board agree with NDC and Verisign that no assignment of NDC's application has occurred and the information provided in NDC's application has not been rendered false. Instead, the DAA contemplates a possible future assignment of the Registry Agreement that NDC might enter into with ICANN, not an assignment of NDC's .WEB application. NDC remains the applicant and, if NDC enters into a Registry Agreement with ICANN, NDC will become the Registry Operator for .WEB. Whether or not NDC then attempts to assign the Registry

Agreement to Verisign is, at this point, an event that has not occurred and conceivably may not occur depending on the circumstances at the time. And if NDC subsequently decides to request such an assignment, there are processes in place to review such a request, including the need for ICANN's approval of that request. Such an assignment does not equate to a "circumvention" of the application process but, rather, is a necessary component for servicing Registry Operators and allowing the continued operation of gTLDs.

The BAMC also noted, as does the Board, that Registry Agreements for new gTLDs have been assigned dozens of times, if not more, following contracting and/or delegation of the gTLD and that, generally, there have been no formal objections regarding possible pre-contracting agreements that provided for a post-delegation transfer subject to ICANN approval.[20 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#foot20)] Although ICANN does not know the circumstances or details of other potential pre-contracting agreements that may have been in place, the BAMC and the Board note that there are examples where assignment requests were submitted shortly after (even as short as one week after) contracting, including for gTLDs that had been the subject of auctions.

Furthermore, if such pre-contracting agreements occurred between private companies, ICANN might not have any direct knowledge of the extent of those agreements because private companies do not have a public disclosure requirement and the Guidebook does not contain a disclosure requirement for such agreements. The primary reason that ICANN and Altanovo became aware of the DAA was due to the fact that Verisign is a public company that was required to make a public disclosure. Verisign should not be treated differently because it is a public company that has a disclosure requirement as compared to private companies that do not have a public disclosure requirement. That being said, the BAMC thinks it is important for applicants and the application process as a whole that ICANN provide greater clarity to applicants regarding the transparency requirements and the notification requirements applicable throughout the various stages of the application process and the ICANN auction process. The Board agrees and has directed ICANN org to consider these issues when developing the Guidebook and auction rules for the next round of the New gTLD Program.

In terms of any Guidebook requirement to update an application for a gTLD, the BAMC and the Board found that NDC did not violate that requirement by entering into the DAA. First and foremost, NDC is still the applicant; that has not changed. And, if NDC enters into a Registry Agreement with ICANN, NDC will become the Registry Operator for .WEB. Second, NDC and Verisign are correct that ICANN does not use the mission and purpose information (set forth in Section 18 of the application) as part of the evaluation or scoring of an application. In this regard, NDC and Verisign also noted that numerous other applicants have changed the mission and purpose for their gTLDs over the course of time without revising those applications and without ICANN taking any punitive action in such circumstances. Moreover, as noted above, it is not uncommon for a Registry Agreement to be assigned to a different Registry Operator, which may have a different mission or purpose for the gTLD. Such an assignment does not equate to a "circumvention" of the application process but, rather, is a necessary component for servicing Registry Operators and allowing the continued operation of gTLDs.

In terms of the Auction Rules and the Bidder Agreement, the BAMC and the Board found that NDC did not violate those provisions because NDC always remained the bidder, the bids that it submitted were legitimate, and NDC was in fact able to fulfill its bid when it became the prevailing party at the auction. The Auction Rules and Bidder Agreement primarily relate to the mechanics of the auction, not the qualifications of an applicant, and the BAMC found that the language in these documents to which Altanovo points was not intended to disqualify an otherwise qualified applicant in these circumstances, a conclusion with which the Board agrees.

With regard to Altanovo's claims regarding ICANN's Core Value relating to competition, the BAMC and the Board note that the Panel understood and explicitly accepted that ICANN "does not have the power, authority, or expertise to act as a competition regulator by challenging or policing anticompetitive transactions or conduct." The Panel further noted that this "is consistent with a public statement once endorsed by [Altanovo], in which it was asserted [that] '[...] Neither ICANN nor the GNSO have the authority or expertise to act as anti-trust regulators.'" The BAMC and the Board note that ICANN's Commitment and Core Value are directed at "enabl[ing[competition and open entry in Internet-related markets" and "[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process." This sets the table for innovation and ensuring a stable, secure and interoperable Internet. This does not equate to being a competition "regulator," as explicitly stated in the Bylaws ("For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.").

Based on the BAMC's extensive review and discussion of the allegations relating to the DAA, the BAMC has recommended that the Board determine that NDC did not violate the Guidebook or the Auction Rules, either through entering into the DAA or through its participation in the .WEB auction, and that the Board direct the Interim President and CEO, or her designee(s), to continue processing NDC's .WEB application.

The BAMC then discussed the allegations regarding Altanovo's conduct during the "Blackout Period" of the .WEB auction but, ultimately, concluded and recommended that the Board need not make a final determination at this time as to whether Altanovo violated the Auction Rules. The Board agrees, but notes that auction participants have sufficient time in advance of an ICANN auction to discuss potential private resolution and, thus, should respect the no-communication rule during the designated Blackout Period.

Finally, there was considerable discussion within the BAMC regarding the fact that, in the next round of the New gTLD Program, ICANN org should consider whether to provide more guidance, in the Applicant Guidebook or otherwise, regarding agreements similar to the DAA, including whether those agreements should be disclosed and, if so, when, as well as what communications are and are not permissible leading up to an ICANN auction. The BAMC believes, and the Board agrees, that it is important for both the applicants and the application process as a whole that ICANN provide greater clarity in the next iteration of the Guidebook and auction rules regarding the transparency and notification requirements applicable throughout the various stages of the application and auction processes. Accordingly, the BAMC has recommended that the Board direct ICANN org to carefully consider such issues when developing the Guidebook and auction rules for the next round of the New gTLD Program.

Board Decision:

The BAMC requested, received, and considered the parties' submissions, and it devoted considerable portions of four separate meetings to this matter before issuing its recommendation. The auction for .WEB generated more money than any other ICANN auction but, regrettably, the ensuing disputes have also generated millions of dollars in legal fees by each of the relevant parties and delayed the delegation of .WEB for more than six years. The BAMC's work and recommendations on this matter were critical to the Board's evaluation of this matter.

The Board thanks Altanovo, NDC and Verisign for their participation in this process. It has been somewhat unique in ICANN's history for ICANN to request submissions from the interested parties, and Altanovo, NDC and Verisign participated fully and in good faith. The Board respects the differences of opinion and has worked diligently to address the issues that the Panel recommended the Board address.

In consideration of the underlying facts, the submissions and supporting materials provided by the parties in July and August 2022 including, but not limited to, the DAA and affiliated documents, NDC's .WEB application, relevant provisions of the Guidebook, Auction Rules and Bidder Agreement, and various other materials, as well as the BAMC's analysis and recommendations, the Board has determined that NDC did not violate the Guidebook or the Auction Rules, either through entering into the DAA or through its participation in the .WEB auction.

No assignment of NDC's application has occurred and the information provided in NDC's application has not been rendered false. Rather, the DAA contemplates a possible future assignment of the Registry Agreement that NDC might enter into with ICANN, not an assignment of NDC's .WEB application. NDC remains the applicant and, in the event NDC enters into a Registry Agreement with ICANN, NDC will become the Registry Operator of .WEB. Whether or not NDC requests and is able to assign that agreement to Verisign is, at this point, an event that has not yet occurred. If NDC subsequently decides to request such an assignment, there are processes in place to review such a request, including the need for ICANN's approval of that request. Assignment of a Registry Agreement is not uncommon and it does not equate to a "circumvention" of the application process but, rather, is a necessary component for servicing Registry Operators and allowing the continued operation of gTLDs.

The Board further finds that NDC did not violate any Guidebook provision by not updating its application as a result of entering into the DAA. The Board notes that numerous other applicants have changed the mission and purpose for their requested gTLDs over the course of time without revising those applications; in addition to the numerous occasions in which the mission and purpose for a gTLD has changed as a result of assignment of the Registry Agreement to a new Registry Operator. The Board further finds that NDC did not violate the Auction Rules or Bidder Agreement in that NDC always remained the bidder, the bids that it submitted were legitimate, and NDC was in fact able to fulfill its bid when it became the prevailing party at the auction, and as set forth above.

With regard to the Blackout Period claims, while the Board notes the issue raised regarding Altanovo's conduct during the Blackout Period, the Board has concluded that, in light of the Board's decision to continue processing NDC's .WEB application, it is not necessary to make a final determination at this time as to whether Altanovo violated the Blackout Period of the .WEB auction.

Finally, the Board acknowledges and agrees with the BAMC's recommendation regarding the importance of greater clarity regarding the transparency and notification requirements in the application and auction processes. The Board recognizes that numerous new gTLD Registry Agreements have been assigned and the Applicant Guidebook applicable to the 2012 round of the New gTLD Program does not address the myriad of circumstances under which such assignments

might occur, and when such agreements may be entered into. In this respect, the Board has determined that it is prudent to take that into consideration when developing the guidelines, rules and procedures for the next round of the New gTLD Program. Thus, the Board is directing ICANN org to carefully consider the issues raised by the parties and the Panel in the .WEB IRP with regard to agreements similar to the DAA and communications prior to an ICANN auction when developing the Guidebook and auction rules for the next round of the New gTLD Program in order to provide greater clarity to applicants regarding the transparency and notification requirements throughout the application and auction processes.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles, Bylaws, and other established procedures. This accountability includes having a process in place by which a person or entity materially and adversely affected by a Board or organization action or inaction may challenge that action or inaction.

Taking this decision is not expected to have any immediate direct financial impact on ICANN. Further, this action should not have any direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

3. Executive Session

a. Confidential Matter

The Board entered into a confidential discussion and took action that shall remain confidential pursuant to Article 3, section 3.5.b of the ICANN Bylaws unless and until it is decided that the information be publicly released.
Published on 2 May 2023

Footnotes

[1 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note1)] https://gnso.icann.org/en/council/resolutions#20140605-2 (https://gnso.icann.org/en/council/resolutions#20140605-2).

[2 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note2)] https://gnso.icann.org/en/issues/igo-ingo-crp-access-final-17jul18-en.pdf (https://gnso.icann.org/en/issues/igo-ingo-crp-access-final-17jul18-en.pdf).

[3 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note3)] https://gnso.icann.org/en/council/resolutions#201905 (https://gnso.icann.org/en/council/resolutions#201905).

[4 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note4)] https://gnso.icann.org/en/council/resolutions/2020-current#20210819-2 (https://gnso.icann.org/en/council/resolutions/2020-current#20210819-2).

[5 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note5)] https://gnso.icann.org/en/issues/specific-crp-igo-epdp-charter-16aug21-en.pdf (https://gnso.icann.org/en/issues/specific-crp-igo-epdp-charter-16aug21-en.pdf).

[6 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note6)] https://gnso.icann.org/en/issues/epdp-specific-crp-igo-final-report-02apr22-en.pdf (https://gnso.icann.org/en/issues/epdp-specific-crp-igo-final-report-02apr22-en.pdf).

[7 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note7)] https://gnso.icann.org/en/council/resolutions/2020-current#202206 (https://gnso.icann.org/en/council/resolutions/2020-current#202206).

[8 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note8)] https://gnso.icann.org/sites/default/files/policy/2022/draft/draft-epdp-specific-curative-

rights-protections-for-igos-report-11jul22-en.pdf (https://gnso.icann.org/sites/default/files/policy/2022/draft/draft-epdp-specific-curative-rights-protections-for-igos-report-11jul22-en.pdf).

[9 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note9)] https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf (https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf) and https://gnso.icann.org/en/issues/specific-crp-igo-epdp-initial-report-preliminary-recommendations-14sep21-en.pdf (https://gnso.icann.org/en/issues/specific-crp-igo-epdp-initial-report-preliminary-recommendations-14sep21-en.pdf).

[10 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note10)] https://www.icann.org/public-comments/igo-ingo-crp-recommendations-2019-07-11-en (/public-comments/igo-ingo-crp-recommendations-2019-07-11-en) and https://www.icann.org/en/public-comment/proceeding/final-report-from-the-epdp-on-specific-curative-rights-protections-for-igos-28-11-2022 (/en/public-comment/proceeding/final-report-from-the-epdp-on-specific-curative-rights-protections-for-igos-28-11-2022).

[11 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note11)] https://www.icann.org/en/system/files/correspondence/chalaby-to-ismail-11jul19-en.pdf (/en/system/files/correspondence/chalaby-to-ismail-11jul19-en.pdf).

[12 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note12)] See https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-20aug19-en.pdf (/en/system/files/correspondence/ismail-to-chalaby-20aug19-en.pdf).

[13 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note13)] See https://www.icann.org/en/system/files/correspondence/chalaby-to-ismail-14oct19-en.pdf (/en/system/files/correspondence/chalaby-to-ismail-14oct19-en.pdf).

[14 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note14)] See https://www.icann.org/en/system/files/correspondence/sinha-to-ismail-01dec22-en.pdf (/en/system/files/correspondence/sinha-to-ismail-01dec22-en.pdf).

[15 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note15)] See https://gac.icann.org/advice/communiques/ICANN76%20Cancun%20Communique.pdf (https://gac.icann.org/advice/communiques/ICANN76%20Cancun%20Communique.pdf).

[16 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note16)] The full text of the Policy can be found at https://www.icann.org/resources/pages/igo-ingo-protection-policy-2020-02-18-en (/resources/pages/igo-ingo-protection-policy-2020-02-18-en).

[17 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note17)] The LRO filings the BAMC had access to are those attached to GCCIX's Amended IRP Request of 19 May 2022.

[18 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note18)] Afilias Domains No. 3 Ltd. is now known as Altanovo Domains Limited and will be referred to herein as "Altanovo."

[19 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note19)] Afilias Domains No. 3 Ltd. is now known as Altanovo Domains Limited and will be referred to herein as "Altanovo."

[20 (/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en#note20)] For instance, in 2012, Demand Media publicly announced an agreement regarding 107 of Donuts' gTLD applications before any Registry Agreements were executed, stating that "it ha[d] entered into a strategic arrangement with Donuts Inc. [...], through which it may acquire rights in certain gTLDs after they have been awarded to Donuts by ICANN. These rights are shared equally with Donuts and are associated with 107 gTLDs for which Donuts is the applicant." Ultimately, approximately 24 new gTLDs that Donuts applied for were subsequently transferred via Registry Agreement assignment to Demand Media.

Related Documents

Agenda | Regular Meeting of the ICANN Board | 30 April 2023 (/en/board-activities-and-meetings/materials/agenda-regular-meeting-of-the-icann-board-30-04-2023-en)

Minutes | Regular Meeting of the ICANN Board | 30 April 2023 (/en/board-activities-and-meetings/materials/minutes-regular-meeting-of-the-icann-board-30-04-2023-en)

Preliminary Report | Regular Meeting of the ICANN Board | 30 April 2023 (/en/board-activities-and-meetings/materials/preliminary-report-regular-meeting-of-the-icann-board-30-04-2023-en)

Ex. R-31

RESPONDENT'S EXHIBIT

Exhibit R-31

From: Enson, Eric P.
Sent: Friday, September 16, 2022 11:03 PM
To: Mike Rodenbaugh
Cc: Watne, Kelly M.; Mostowy, Walter
Subject: .GCC - ICANN's Responses to Claimant's Requests for Production and Draft Proposed Stipulated Facts
Attachments: .GCC - ICANN's Responses to Claimant's Document Requests.pdf; GCCIX IRP - Proposed Stipulated Facts (DRAFT 9.16.22).docx

Mike,
ICANN's Responses to Claimant's Requests for Production are attached. Also attached is a draft of a set of proposed stipulated facts that the parties may be able to use to narrow discovery and streamline the IRP. Once you have had a chance to look at the draft proposed stipulated facts, let's have a call to discuss. Thanks.
Eric

Eric P. Enson
JONES DAY® - One Firm Worldwide℠
Los Angeles +1.213.243.2304
San Francisco +1.415.963.6994
Contact Information Redacted

Ex. R-32

RESPONDENT'S EXHIBIT

JONES DAY

April 13, 2023

VIA EMAIL

Mike Rodenbaugh
RODENBAUGH LAW
548 Market Street
San Francisco, CA 94104
mike@rodenbaugh.com

Re: *GCCIX W.L.L. v. ICANN Independent Review Process*

Dear Mike:

I write with two updates. First, as you know, ICANN's Board Accountability Mechanisms Committee ("BAMC") has been reviewing, considering, and evaluating: the underlying basis for the Governmental Advisory Committee ("GAC") consensus advice that GCCIX's .GCC application should not proceed ("GAC Advice"), including and in light of the GAC's 25 January 2022 letter regarding the GAC Advice and GCCIX's 7 September 2022 letter responding to the GAC's January 2022 letter; the Board's prior acceptance of the GAC Advice; and relevant related materials. The BAMC has approved a recommendation to be submitted to the full ICANN Board for consideration, and the next Board meeting wherein that recommendation could be considered will be in late-April 2023. While it is unclear what action the Board will take, there is a possibility that the Board's action may impact this IRP, Claimant's claims and/or ICANN's defenses. Given this, as well as the 12 May 2023 due date for Claimant's Statement of Claim, I suggest that the parties jointly request that the Panel extend the deadlines for the pre-hearing briefs as well as the final hearing. A short extension should give the parties sufficient time to incorporate any points raised by the Board's action(s) into the parties' filings, to the extent warranted or necessary; and it avoids the possibility that the parties' filings would need to be re-done or amended. I believe that a two-month extension of all deadlines (specific dates to be mutually agreed) would be sufficient, although moving dates will, of course, require input from the Panel. Please let me know by 20 April if Claimant is agreeable to such an extension.

Second, again in an effort to ensure that this IRP proceeds as efficiently as possible, ICANN reiterates that it considers the following facts undisputed, meaning that ICANN will not challenge or dispute in the IRP the following facts: (i) On 11 April 2013, ICANN's Governmental Advisory Committee ("GAC") issued the Beijing Communiqué, which contained, in part, GAC consensus advice that the .GCC application should not proceed ("GAC Advice");

(ii) There was no written rationale for the GAC Advice in the Beijing Communiqué in 2013; (iii) On 4 June 2013, ICANN's New gTLD Program Committee ("NGPC") passed a resolution accepting the GAC Advice; and (iv) The NGPC did not provide a written rationale in its resolution when it accepted the GAC Advice beyond reliance on Section 3.1 of the Applicant Guidebook, which states that GAC consensus advice against an application proceeding "will create a strong presumption for the ICANN Board that the application should not be approved." Moreover, ICANN will not challenge or dispute in the IRP that the Final Declarations of the IRP Panels in the .AFRICA and .AMAZON IRPs were based on facts similar to those not disputed by ICANN above. By communicating this to you in advance of the filing of Claimant's Statement of Claim, it is ICANN's hope that the IRP as well as Claimant's presentation in its Statement of Claim can be streamlined and made more efficient.

If you would like to discuss these issues, please let me know.

Sincerely,

Eric P. Enson

Eric P. Enson

Ex. R-33

RESPONDENT'S EXHIBIT

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

GCCIX, W.L.L., Claimant, and INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, Respondent.	)	ICDR CASE NO. 01-21-0004-1048

ICANN'S RESPONSE TO CLAIMANT'S MOTION TO COMPEL

Eric P. Enson
Kelly M. Watne
JONES DAY
555 South Flower Street, 50th Fl.
Los Angeles, CA 90071
Tel: +1.213.489.3939

Counsel to Respondent
The Internet Corporation for
Assigned Names and Numbers

11 November 2022

INTRODUCTION

The Internet Corporation for Assigned Names and Numbers ("ICANN") submits this response to Claimant GCCIX, W.L.L.'s Motion to Compel ("Motion") in the above-entitled Independent Review Process ("IRP").

1. Claimant's Motion makes clear that Claimant is engaging in a widespread fishing expedition that circumvents both the Interim Supplementary Procedures and the ICDR Rules that are applicable to this IRP. The core issue before this IRP Panel is the ICANN Board's decision to accept consensus advice issued by the Governmental Advisory Committee ("GAC") to the ICANN Board that the .GCC application should not proceed ("GAC Advice"). Yet, Claimant is seeking documents on a whole host of other issues that are not relevant to this IRP. Claimant has not explained (because it cannot) the relevance or materiality of many of its requests for production ("Requests") and also cannot justify the burden on ICANN of responding to its Requests.

2. Moreover, ICANN has made several efforts to streamline the discovery phase of this IRP as well as the IRP as a whole by proposing a draft set of stipulated facts to Claimant (more than eight weeks ago) relating to the GAC Advice and Claimant's application. Indeed, the proposed stipulated facts render many of Claimant's Requests unnecessary. Claimant, however, has been unwilling to even engage with ICANN on the proposed stipulated facts as they relate to discovery. Again, Claimant's behavior undermines the ICDR Rules, which provide that the Panel "shall manage the exchange of information between the parties with a view to ***maintaining efficiency*** and economy[,]" and that the Panel and the parties "should endeavor to avoid ***unnecessary delay and expense***."[1]

[1] ICDR Arbitration Rules, Art. 24(1), R-40 (emphasis added).

3. Claimant also has engaged in bad faith by plagiarizing from ICANN's requests for production served several hours before Claimant served its Requests, despite the fact that Procedural Order No. 4 contemplated a simultaneous exchange. Finally, in its Motion, Claimant casts numerous aspersions on ICANN that are unsupported in all events, and, in so doing, Claimant ignores its own bad faith during this process. Claimant's Motion should be denied for each of these separate and independent reasons.

SUMMARY OF RELEVANT FACTS

4. On 14 July 2022, this Panel issued Procedural Order No. 4, which required the parties to exchange Requests for Production on 17 August 2022.[2] Given that both parties' Requests for Production were due on the same date, it was implicit (if not explicit) that Procedural Order No. 4 contemplated a simultaneous exchange, whereby neither party would try to seek an unfair advantage by reviewing the other party's requests and amending its own requests as a result.

5. On 17 August 2022, ICANN propounded its requests for production on Claimant, setting forth the relevance and materiality of each request. ICANN also explained that it was considering proposing stipulated facts to Claimant that may narrow the parties' requests for production or make certain requests unnecessary.[3]

6. Several hours later, Claimant served its Requests. Seven of Claimant's twenty Requests were copied nearly verbatim from ICANN's Requests served earlier in the day, including ICANN's explanation as to how the Request was relevant and material.[4]

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[2] Procedural Order No. 4, p. 5.

[3] Email from K. Watne to M. Rodenbaugh (17 Aug. 2022), Ex. R-45.

[4] *Compare* Claimant's Requests for Production Nos. 14 through 20, Ex. A to Claimant's Motion *with* ICANN's Requests for Production Nos. 1, 3, 4, 6, 7, 13, and 16, Ex. R-46.

7. ICANN submitted its responses and objections to Claimant's Requests on 16 September 2022, in accordance with Procedural Order No. 4 ("Responses"). In so doing, ICANN agreed to conduct a reasonable search and produce responsive, non-privileged documents in response to Requests that were relevant and material to this IRP. But ICANN objected to many of the Requests on various grounds, most notably that Claimant appeared to be engaging in an irrelevant fishing expedition.[5]

8. ICANN also provided Claimant with draft proposed stipulated facts, and explained that the parties should use those stipulated facts to narrow discovery and streamline the IRP.[6] The proposed stipulated facts address nearly all of Claimant's core claims relating to the evaluation of Claimant's .GCC application in 2013, including ICANN's acceptance of the GAC Advice regarding Claimant's .GCC application and the termination of the Legal Rights Objection ("LRO") proceeding instituted by the Gulf Cooperation Council ("GCC")[7] against Claimant's application.[8] The stipulated facts are especially helpful here, where much of the conduct Claimant challenges occurred almost ten years ago, and many of the relevant members of ICANN staff or the ICANN Board are no longer with ICANN. Claimant failed to respond to ICANN's proposed stipulated facts.

9. On 30 September 2022, the parties met and conferred regarding Claimant's and ICANN's Requests. During the meet-and-confer, ICANN explained to Claimant that ICANN's proposed stipulated facts obviated the need for many of Claimant's Requests, yet Claimant refused to withdraw or narrow any Requests. Instead, Claimant contended that the parties should

[5] *See generally*, Ex. A to Claimant's Motion.
[6] Email from E. Enson to M. Rodenbaugh (16 September 2022), Ex. R-47; Proposed Stipulated Facts, Ex. R-48.
[7] The GCC is also known as the Cooperation Council for the Arab States of the Gulf or CCASG.
[8] Ex. R-48.

wait until after discovery had been completed before agreeing to any stipulated facts, which circumvents the entire purpose for which ICANN proposed the stipulated facts in the first place.

10. The parties were unable to reach an agreement on the Requests that are addressed by the proposed stipulated facts, or any other Requests to which ICANN objected. Thus, Claimant filed its Motion, requesting production of documents in response to Request Nos. 1-8, 10, 12, and 14-20.[9]

STANDARD OF REVIEW

11. ICANN's Interim Supplementary Procedures and the ICDR Rules, both of which are applicable to this IRP, anticipate that the parties will engage in exchange of information that is relevant and material to the claims or defenses in the IRP.[10] Rule 8 of the Interim Supplementary Procedures provides:

> On the motion of either Party and upon finding by the IRP PANEL that such exchange of information is necessary to further the PURPOSES OF THE IRP, the IRP PANEL may order a Party to produce to the other Party, and to the IRP PANEL if the moving Party requests, documents or electronically stored information in the other Party's possession, custody, or control that the Panel determines are ***reasonably likely to be relevant and material to the resolution of the CLAIMS and/or defenses in the DISPUTE*** and are not subject to the attorney-client privilege, the work product doctrine, or otherwise protected from disclosure by applicable law (including, without limitation, disclosures to competitors of the disclosing person, group or entity, of any competition-sensitive information of any kind).[11]

12. Similarly, the ICDR Rules provide that the IRP Panel may "require a party to make available to another party documents in that party's possession not otherwise available to the party seeking documents, that are reasonably believed to exist and to be relevant and material

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[9] *See generally* Motion. Claimant agreed to withdraw three Requests in its Motion, but those Requests do not relate to the proposed stipulated facts.

[10] Interim Supp. Proc. Rule 8, R-41; ICDR Arbitration Rules, Art. 24.

[11] Interim Supp. Proc. Rule 8 (emphasis added).

to the outcome of the case."[12] The ICDR Rules provide further that the Panel and the parties "should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly."[13] And the ICDR Rules specifically require the party moving to compel discovery to "justify the time and expense that its request may involve and may condition granting such a request on the payment of part or all of the cost by the party seeking the information."[14]

ARGUMENT[15]

I. CLAIMANT'S REQUESTS FOR PRODUCTION SHOULD BE DENIED BECAUSE THEY ARE IRRELEVANT, OVERBROAD, AND UNDULY BURDENSOME ON ICANN.

13. Each of Claimant's Requests should be denied because they are irrelevant, overbroad, and unduly burdensome on ICANN, as discussed more fully below.

A. Request No. 1.

14. Request No. 1 seeks documents relating to "ICANN's treatment of the .GCC gTLD application, including (without limitation) initial consideration, reconsideration of the GCCIX application to operate the .GCC gTLD, the Independent Objection to Claimant's application, the Legal Rights Objection to Claimant's application, and/or all communications with Constituent Bodies (including without limitation the GAC)." In response, ICANN agreed to conduct a reasonable search and produce "documents and communications regarding ICANN's communications with the GAC regarding the .GCC application following the 12 September 2021 Board Resolution authorizing ICANN staff to open an informal dialogue

[12] ICDR Arbitration Rules, Art. 24(4).
[13] *Id*., Art. 24(1).
[14] *Id*., Art. 24(8).
[15] This section addresses ICANN's principal objections to Claimant's Requests, not every objection, and ICANN expressly does not waive or withdraw any objection set forth in ICANN's Responses.

with the GAC regarding the rationale for the GAC Advice . . . from 12 September 2021 to the present."[16] Claimant contends that there is "no legal basis for narrowing [ICANN's] response only to that time period."[17] The legal basis, however, is clear.

15. ICANN's proposed stipulated facts address all of the facts surrounding ICANN's treatment of the .GCC application, as alleged in Claimant's Amended IRP Request, that predate the Board's resolution in September 2021. A stipulated fact is no longer "in dispute"; therefore, documents underlying the undisputed stipulated facts are not "relevant and material to the resolution of the" claims or defenses in this IRP, which is a prerequisite under the applicable discovery rules.[18] By way of example, Claimant argues that this Request is relevant to Claimant's allegation that ICANN terminated the Legal Rights Objection ("LRO") proceeding without any rationale.[19] But one of the proposed stipulated facts addresses this precise issue: "On 5 September 2013, ICANN informed Claimant that the GCC's LRO proceeding was 'not moving forward based on the NGPC's action on 4 June 2013,'" meaning the Board's acceptance of the GAC Advice. Similarly, as set forth in Appendix A, ICANN proposed additional stipulated facts regarding the Independent Objector, the GAC Advice, and consideration of the .GCC application, making discovery into those subjects unnecessary.

16. Even if the documents Claimant seeks were relevant, Claimant's Motion still fails because the Requests are overbroad and Claimant cannot "justify the time and expense that its request[s] may involve."[20] Claimant has not identified a single document it needs to prove its

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[16] ICANN's Responses, at Request No. 1, Ex. A to Claimant's Motion.

[17] Motion, p. 4.

[18] Cal. Evid. Code § 210, RLA-7 ("'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove ***any disputed fact*** that is of consequence to the determination of the action."); *see also* Interim Supp. Proc. Rule 8; ICDR Arbitration Rules 24(4).

[19] Motion, p. 4.

[20] ICDR Arbitration Rules, Art. 24(8).

case relating to the topics covered by the proposed stipulated facts, yet Claimant has refused to narrow or withdraw this Request (or any of its Requests for that matter). This circumvents the entire purpose of information exchange in an IRP, which, according to the applicable rules, should be conducted with a "view to ***maintaining efficiency*** and economy," and in an effort "to avoid ***unnecessary delay and expense*****[**.]"[21]

17. Moreover, Claimant's Request primarily relates to conduct that occurred nearly ten years ago, and since that time, many members of ICANN staff and the ICANN Board have left ICANN. Thus, the proposed stipulated facts are intended to reduce the burden on both parties of performing extensive searches into decades' old documents and events. There is simply no justification for requiring ICANN to respond to Claimant's Requests, given the proposed stipulated facts. To the extent the Panel disagrees, however, ICANN requests that the Panel require Claimant to share ICANN's costs of responding to these Requests, including costs associated with ICANN's eDiscovery vendor and reasonable attorneys' fees, as contemplated by the ICDR Rules.[22]

18. Additionally, Claimant seeks documents within the possession of the GAC and ICANN's "Constituent Bodies," as that term is vaguely defined by Claimant, which are not relevant or material to this IRP. In this IRP, Claimant only can challenge conduct by the ICANN Board.[23] Claimant does not make any claims against the GAC, or any other Advisory Committee, Supporting Organization, or "Constituent Body," nor could it make such claims because this IRP is limited to determining whether the ICANN Board violated its Articles or

[21] ICDR Arbitration Rules, Art. 24(1) (emphasis added).
[22] *Id*., Art. 24(8).
[23] *See, e.g.*, Claimant's Amended IRP Request, p. 19.

Bylaws.[24] Therefore, documents and communications that are purely internal to these committees, organizations, or bodies, and that never were disclosed, forwarded, or sent to any ICANN Board or staff member, cannot possibly be relevant to whether the ICANN Board violated its Articles or Bylaws. Claimant's Motion essentially concedes this point. Claimant confirms that "at the heart of this IRP is ***ICANN's*** decision" to accept the GAC advice, not whether the GAC itself considered appropriate information before issuing that advice.[25]

19. To be clear, for the Requests to which ICANN agreed to respond, ICANN intends to produce to Claimant any documents between ICANN and any advisory committee, supporting organization, or third party located following a reasonable search, to the extent the document is responsive and not privileged. But ICANN will not agree to produce documents purely internal to any Advisory Committee, Supporting Organization, or "Constituent Body" because they are not relevant or material to this IRP (and may not even be in ICANN's possession, custody, or control, given Claimant's vague and overbroad definition of "Constituent Body").

20. Further, this Request is incredibly overbroad, even with Claimant's concession that it "does not seek documents relating to string similarity review, DNS stability review, technical and operational capability review, or financial capability review of Claimant's application."[26] Indeed, it is inconceivable that all "communications, documents and things which concern, reference, reflect, relate to and/arise from ICANN's treatment of the .GCC gTLD application," as Claimant requests, are relevant and material to this IRP. Claimant has failed to identify the "specific documents or classes of documents" that are relevant and material to the

[24] *See* Claimant's Amended IRP Request, p. 19 (seeking review of a list of "ICANN's actions"), Bylaws (Apr. 2013), Art. IV, § 4.3(1), Ex. R-1.
[25] Motion, p. 8.
[26] Motion, p. 4.

outcome of this IRP, as required under the ICDR Rules, and ICANN should not be required to respond to Claimant's improper attempt to engage in an overbroad fishing expedition.[27]

21. Accordingly, ICANN requests that the Panel deny Claimant's Motion as to Request No. 1, given the proposed stipulated facts and the documents ICANN already agreed to produce.

B. Request No. 2.

22. Request No. 2 seeks documents related to Claimant's Reconsideration Request 13-17. Claimant alleges that it is entitled to "ICANN's internal documents" because "the Bylaws require that any Staff materials relied upon by the" BAMC or BGC when considering a Reconsideration Request "be publicly posted on ICANN's website."[28] This justification is nonsensical. As ICANN explained in its objections, the publicly available materials include the Reconsideration Request filed by Claimant (along with the exhibits); a letter from WIPO to the BGC; the BGC's Recommendation on Reconsideration Request 13-17; the New gTLD Program Committee Action Adopting Recommendation of the BGC; and the minutes, committee papers, and reference materials from the 30 January 2014 meeting where Reconsideration Request 13-17 was considered. Moreover, the documents considered by the BGC are specifically cited in its Recommendation on Reconsideration Request 13-17. These documents are publicly available on ICANN's website, and ICANN already directed Claimant to the relevant documents.[29]

[27] ICDR Arbitration Rules, Art. 24(4).
[28] Motion, p. 5.
[29] Exhibit A to Claimant's Motion, at Request No. 2.

C. Request No. 3.

23. Request No. 3 seeks documents related to "any ICANN request for the GAC to provide rationale for its advice to disallow the .GCC application." In response, ICANN agreed to conduct a reasonable search and produce "communications between ICANN and the GAC regarding the GAC Advice following the September 2021 Board Resolution." This limitation was reasonable because the proposed stipulated facts render documents pre-dating the Board's 2021 resolution irrelevant, and Claimant cannot justify the burden on ICANN, as ICANN explained in response to Request No. 1 above and in Appendix A. Moreover, ICANN presently is not aware of any such "request for the GAC to provide a rationale for" the GAC Advice that predates the Board's September 2021 Board Resolution.

D. Request No. 4.

24. Request No. 4 seeks documents related to "ICANN's choice not to implement the GNSO Supermajority consensus policy that IGO acronyms are generally not to be reserved at the top-level." Claimant argues that this Request is relevant because Claimant alleges in its Amended IRP Request that "ICANN has violated its Bylaws by refusing 'to provide any rationale for refusing to accept the unanimous GNSO Council recommendation[.]'"[30] The GNSO Council recommendations, however, were submitted to the ICANN Board in January 2014, six months *after* the ICANN Board accepted the GAC Advice regarding the .GCC application (in June 2013). Thus, the GNSO Council's recommendations could not have been considered by the Board when it accepted the GAC advice, rendering this Request irrelevant to the core claims in this IRP.

[30] Motion, p. 6 (citation omitted).

25. Further, this Request is incredibly vague, overbroad, and unduly burdensome on ICANN. This Request is vague insofar as it is unclear what Claimant is referring to when it uses the term "GNSO Supermajority consensus policy"; and the Request is overbroad and unduly burdensome in that Claimant is seeking ten years' worth of documents and information that "concern, reference, reflect, relate to and/or arise from" the "GNSO Supermajority consensus policy," all of which cannot possibly be relevant and material to the outcome of this IRP. Again, Claimant has failed to identify "specific documents or classes of documents," as required under the ICDR Rules, and as set forth in response to Request No. 1 above.

26. The burden on ICANN is particularly unreasonable, given that many documents regarding ICANN's involvement on this issue are publicly available on ICANN's website, and therefore equally available to Claimant. Claimant apparently has not even bothered to review the extensive publicly available information on ICANN's website, and has made zero attempt to narrow or focus this Request or any of the Requests, in light of the publicly available information. In an effort to compromise, ICANN will agree to provide Claimant with a non-exhaustive list of links to publicly available materials on ICANN's website in response to this Request. But Claimant simply has not provided any justification for ICANN to conduct a search of nearly ten years' worth of documents, and its argument that it is seeking documents and information regarding "just one issue" does not reduce the burden on ICANN of collecting and reviewing documents.

E. Request No. 5.

27. Request No. 5 seeks documents related to ICANN's response to Claimant's Documentary Information Disclosure Policy request ("DIDP Request"). As ICANN explained in its response to Claimant's Amended IRP Request, and again in its Responses, the version of the ICANN Bylaws that are substantively applicable to this IRP were clear that only Board conduct

can be challenged in an IRP; under this version of the Bylaws, a Claimant could not institute an IRP to challenge ICANN staff action.[31] DIDP Requests are evaluated by ICANN staff, not the ICANN Board, such that this claim is not properly before this IRP Panel, and ICANN should not be required to produce any documents as a result. In any event, DIDP Requests and DIDP Responses are publicly available on ICANN's website, and ICANN will agree to direct Claimant to this publicly available information.

F. Request No. 6

28. Claimant's Request No. 6 seeks documents regarding the "facilitation of discussions pertaining to the .Amazon gTLD between the Amazon corporate applicant(s) and any or all [of] the Amazonian country governments." Claimant's primary justification for seeking these documents is that Claimant "is entitled to understand how and why ICANN facilitated government discussions for Amazon, Inc."—related to the .AMAZON gTLD—but "not for Claimant."[32] Claimant's argument is nonsensical. Nothing about Claimant's claims in this IRP allows Claimant unfettered access to documents and information pertaining to a completely unrelated gTLD application filed by an unrelated entity.

29. To the extent that Claimant intends to argue that ICANN should have treated Claimant's application differently in 2013 based on the Final Declaration in the .AMAZON IRP (notwithstanding that the .AMAZON Final Declaration was issued approximately four years ***after*** the ICANN Board accepted the GAC Advice relating to Claimant's application), that argument concerns the precedential value of a prior IRP, which is a question of law to be argued by the parties. It does not allow Claimant to obtain broad sweeping discovery regarding the

[31] *See, e.g.*, Bylaws (11 Apr. 2013), Art. IV, § 4.3(2), Ex. R-1. The Bylaws substantively applicable to the DIDP Request and Response are the 11 February 2016 Bylaws, which mirror the 11 April 2013 Bylaws in this respect.
[32] Motion, p. 7.

unrelated .AMAZON gTLD. Indeed, it is ludicrous to imagine that a litigant that argues that an unrelated court ruling applies to the facts of the litigant's case somehow can obtain all documents related to that other (unrelated) case.

30. Moreover, there is significant information regarding " why ICANN facilitated government discussions for Amazon, Inc." that is publicly available. In an effort to compromise, ICANN will agree to direct Claimant to that publicly available information. Otherwise, Claimant clearly is engaging in a fishing expedition into documents and information to which it is not entitled.

G. <u>Request No. 7.</u>

31. Request No. 7 seeks documents that "arise from ICANN's facilitation of discussions between [Claimant] and any other third party, including without limitation any or all of the [GCC] country governments." At the outset, Claimant's reference to "any other third party" is impermissibly vague and overbroad. Similarly, the Request as a whole is vague and overbroad in that Claimant has failed to identify the topic of such "discussions." For the sake of this argument, ICANN will assume (and limits its response accordingly) that Claimant is referring to a facilitation of discussions between Claimant and the GCC or its member countries regarding Claimant's application for .GCC. To that extent, it seems odd that Claimant would seek those documents when Claimant in fact argues that ICANN allegedly refused to facilitate any such discussions. Furthermore, if there were such discussions facilitated by ICANN between Claimant and the GCC or its member countries, then, by definition, Claimant would have been a party to those discussions and already have those documents. And as such, ICANN should not be required to produce responsive documents pursuant to the ICDR Rules.[33] In an

[33] ICDR Rules, Art. 24(4) ("The tribunal may, upon application, require a party to make available to another party documents in that party's possession ***not otherwise available to the party seeking the documents***.") (emphasis added).

effort to resolve the dispute regarding this Request, ICANN will agree to conduct a reasonable search for communications between ICANN and the GCC or its member countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates) to facilitate discussions between Claimant and the GCC (or its member countries) regarding Claimant's .GCC application.

H. Request No. 8.

32. Request No. 8 seeks documents related to any "policy changes, procedural changes, or any other organizational changes in response to the DCA Trust or .Amazon IRP Decisions." Claimant contends that this Request is relevant because Claimant is "entitled to understand how and why ICANN allowed the .Africa application to proceed, but refuses to allow Claimant's application to proceed," and that Claimant is "entitled to understand how and why ICANN facilitated government discussions for Amazon, Inc., but not for Claimant."[34] This Request should be denied for the same reasons as Request No. 6. Specifically, Claimant is not entitled to any discovery regarding unrelated gTLDs or unrelated IRPs, regardless of whether Claimant intends to argue that those IRPs are precedential here. Also, many of the documents Claimant seeks are publicly available; as a compromise, ICANN will agree to direct Claimant to those publicly available documents. Claimant's request, however, for "[a]ll communications, documents and things which concern, reference, reflect, relate to and/or arise from" this topic renders this Request significantly overbroad and violates the applicable ICDR Rules, as set forth in response to Request No. 1 above.

33. Finally, Claimant's use of the terms "policy changes, procedural changes, or any other organizational changes" is vague such that ICANN truly cannot ascertain what documents Claimant is seeking.

[34] Motion, p. 8.

I. Request No. 10

34. Request No. 10 seeks documents "that the GAC has considered" related to ".GCC, Claimant, or Claimant's application." This Request should be denied for the same reasons as Request No. 1 set forth above. Specifically, Claimant can only challenge conduct by the ICANN Board in this IRP, meaning that documents purely internal to the GAC cannot be relevant to whether the ICANN Board violated its Articles or Bylaws (and may not even be in ICANN's possession, custody, or control in any event).[35] Claimant nevertheless argues that "any information relevant to the GAC Advice must have been relevant and material to ICANN's decision to presumptively accept that advice"[36]; yet Claimant fails to connect the dots between information the GAC considered that was never disclosed to or discussed with ICANN and ICANN's decision to accept the GAC Advice. Claimant's Request also should be denied because it is covered by the proposed stipulated facts, and because it is incredibly overbroad insofar as it seeks all documents that "concern, reference, reflect, relate to and/or arise from" Claimant's application.

J. Request No. 12.

35. Claimant appears to narrow this Request to seek only the unredacted portion of the hearing transcript from the .AFRICA IRP that relates to the .GCC gTLD. Assuming so, ICANN will agree to produce to Claimant the unredacted portions of the hearing transcript that mention the .GCC gTLD. Otherwise, this Request should be denied for the same reasons set forth above in response to Request Nos. 6 and 8.

K. Request No. 14

[35] *See, e.g.*, Claimant's Amended IRP Request, p. 19.
[36] Motion, p. 8.

36. Request No. 14 seeks documents and communications "between Claimant and ICANN relating to the GAC Advice." Claimant's Request should be denied to the extent it seeks documents within Claimant's possession, custody, and control, which is inconsistent with the ICDR Rules.[37] Claimant's Request also should be denied because it is covered by the proposed stipulated facts, as ICANN explained in response to Request No. 1 above and in Appendix A.

37. Additionally, this Request was propounded in bad faith because it was plagiarized nearly verbatim from ICANN's requests for production. Procedural Order No. 4 contemplated a simultaneous exchange and did not anticipate that one party would gain any sort of unfair advantage over the other. Indeed, the ICDR Rules state in part that parties "should endeavor to avoid unnecessary delay and expense while at the same time ***avoiding surprise, assuring equality of treatment***, and safeguarding each party's opportunity to present its claims and defenses fairly."[38] But Claimant circumvented this process by taking advantage of the fact that ICANN served its requests for production earlier than Claimant. Claimant clearly reviewed ICANN's requests and amended its Requests as a result. Accordingly, ICANN requests that the Panel deny Claimant's Motion as to this Request (and Request Nos. 15 through 20, as discussed below) due to Claimant's bad faith.

L. <u>Request No. 15</u>

38. Request No. 15, which was plagiarized from ICANN, seeks documents relating to the GAC Early Warning issued to Claimant in November 2012 by several members of the GAC. Specifically, this Request seeks information pertaining to "any effort by ICANN and/or the GAC to address any concerns raised in the Early Warning." This Request makes no sense because,

[37] ICDR Rules, Articles 24(4) ("The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents[.]"). In fact, Claimant objected to ICANN's similar request on that basis, and ICANN elected not to move to compel Claimant to produce any documents in response.

[38] ICDR Arbitration Rules, Article 24(1) (emphasis added).

under the Applicant Guidebook, the purpose of an Early Warning is to "provide[] the ***applicant*** with an indication that the application is seen as potentially sensitive or problematic by one or more governments" and to give the ***applicant*** an opportunity to mitigate or address the concerns raised, which "may include meeting with the representatives of the relevant government(s) to try to address the concern."[39] An Early Warning is not directed at ICANN or the GAC, and neither ICANN nor the GAC are required to respond to Early Warnings. Thus, Claimant's Request is irrelevant as to ICANN, and should be denied as irrelevant and due to Claimant's bad faith.

39. Claimant's Request also should be denied because it is covered by the proposed stipulated facts, as ICANN explained in response to Request No. 1 above and in Appendix A.

M. <u>Request No. 16.</u>

40. Request No. 16 seeks documents related to "the public comments ICANN received about the .GCC application," including "any effort by ICANN and/or the GAC to address the concerns raised in the public comments." Once again, Claimant plagiarized this Request from ICANN. As a result, this Request makes no sense here (as is the case with the other plagiarized Requests). More specifically, once an application is publicly posted, ICANN opens a comment period to allow "the community to review and submit comments on posted application materials."[40] ***Claimant's*** knowledge of any concerns raised in the comments, and ***Claimant's*** efforts to address any such concerns, are relevant to this IRP, which is why ICANN requested such documents from Claimant. Neither ICANN nor the GAC are tasked with responding to comments that express concern about a new gTLD application. Thus, this Request should be denied as irrelevant and on account of Claimant's plagiarism.

[39] Guidebook, § 1.1.2.4, Ex. R-5.
[40] *Id.*, § 1.1.2.3.

41. Claimant's Request also should be denied because it is covered by the proposed stipulated facts, as ICANN explained in response to Request No. 1 above and in Appendix A.

N. Request No. 17.

42. Request No. 17 seeks "communications between ICANN and the CCASG, the GAC, and/or any member of the CCASG and/or the GAC relating to the .GCC new gTLD, the Early Warning, public comments, and/or the GAC Advice." ICANN agreed to conduct a reasonable search and produce communications between ICANN and the GCC regarding the .GCC application following the September 2021 Board Resolution. Claimant's only complaint regarding ICANN's response to Request No. 17 is that ICANN should be required to produce documents that predate the September 2021 Board Resolution. All documents that predate the September 2021 Board Resolution, however, are not relevant because those claims are addressed by the proposed stipulated facts, as ICANN explained in response to Request No. 1 above and in Appendix A. Additionally, this Request should be denied because Claimant impermissibly plagiarized from ICANN's Requests, notwithstanding that Procedural Order No. 4 contemplated a simultaneous exchange.

O. Request No. 18.

43. Request No. 18 does not require any production of documents, given the information that is already in the record. Claimant appears to narrow this Request to "documents considered by ICANN in deciding to terminate" the LRO proceeding. But Claimant already is in possession of the documents reflecting the reasons why the LRO proceeding terminated. ICANN sent a letter to Claimant in 2013 setting forth the reasons why the LRO proceeding was terminated, which Claimant attached as Annex 9 to its Amended IRP Request. In addition, in July 2013, WIPO informed Claimant directly that the LRO was being terminated as a result of

ICANN's acceptance of the GAC Advice. Thus, Claimant already has documents and information responsive to this Request.

44. Claimant's Request also should be denied because it is covered by the proposed stipulated facts, as ICANN explained in response to Request No. 1 above and in Appendix A. Further, this Request should be denied because Claimant impermissibly plagiarized from ICANN's Requests, notwithstanding that Procedural Order No. 4 contemplated a simultaneous exchange.

P. Request No. 19.

45. As with other Requests, Request No. 19 is vague and overbroad. This Request seeks documents "supporting or demonstrating that ICANN considered . . . whether or not Claimant's operation of the .GCC gTLD would further the public interest."[41] Once again, this Request is plagiarized from ICANN's Requests, notwithstanding that Procedural Order No. 4 contemplated a simultaneous exchange. ICANN propounded this Request on Claimant because Claimant specifically alleged in its Amended IRP Request that Claimant's application was "in the public interest."[42] Thus, ICANN was seeking documents from Claimant that support Claimant's allegation. When propounded on ICANN, this Request is vague and overbroad as to the relevant time period or the context of the Request, such that ICANN cannot discern what documents Claimant is seeking.

Q. Request No. 20.

46. Request No. 20 seeks "documents and communications that Respondent contends supports the statements in its Response to the Amended IRP Request." In response, ICANN agreed to "produce documents and communications that support the statements in its Responses

[41] Claimant's Request No. 19.
[42] Amended IRP Request, p. 26.

to Claimant's Amended IRP Request and to complete its production by 3 March 2023." ICANN, however, reserved its right "in its briefing on the merits and at the IRP hearing to rely on any publicly available documents not produced in discovery."[43]

47. Claimant's justification for moving to compel as to Request No. 20 is perplexing. Claimant complains that ICANN should produce responsive documents "much sooner" than the 3 March 2023 deadline set forth in Procedural Order No. 4, without any support or justification (as discussed more fully below). Notably, Claimant has not produced a single document, yet casts unwarranted aspersions on ICANN for the same conduct. ICANN has every intention of complying with the Panel's deadlines set forth in Procedural Order No. 4, and the Panel should reject Claimant's unilateral and unjustified attempt to modify those deadlines.

48. Claimant also complains that ICANN should not be allowed to rely on publicly available information if that information is not "produced" to Claimant by 3 March. Again, this objection is nonsensical. Publicly available information is, by its very definition, public and therefore equally accessible to both parties. It is common practice in IRPs and litigation in general for any party to rely on publicly available information that is not otherwise "produced" by that party in discovery. Any publicly available information on which ICANN intends to rely will be explicitly cited in its brief, and attached as an exhibit, as has been common practice in this IRP (and in all others).

49. Claimant's requested relief, beyond what ICANN already agreed to produce, also should be denied because Claimant impermissibly plagiarized from ICANN's Requests, notwithstanding that Procedural Order No. 4 contemplated a simultaneous exchange.

[43] ICANN's Responses, at Request No. 20.

II. THE PANEL SHOULD REJECT CLAIMANT'S REQUEST TO IMPOSE A NEW PRODUCTION DEADLINE AS UNREASONABLE AND INCONSISTENT WITH PROCEDURAL ORDER NO. 4.

50. In its Motion, Claimant inexplicably requests that the Panel order ICANN to complete its production, including a privilege log, by 31 December 2022.[44] Claimant's request is unwarranted and patently unreasonable. The Panel's Procedural Order No. 4 clearly identifies 3 March 2023 as the deadline for both parties to complete document production, and ICANN has every intention of meeting that deadline.[45] There is absolutely no justification for Claimant's request to alter unilaterally the Panel's Procedural Order, especially given that the Panel has not yet ruled on Claimant's Motion.

51. Claimant also argues that ICANN has not met the "deadlines" set forth in Section 8 of Procedural Order No. 4, which provides that "the parties will endeavor to produce responsive documents within 30 days of a request."[46] ICANN did endeavor to produce responsive documents within that timeframe but, upon receiving Claimant's Requests, ICANN quickly recognized that many Requests were overbroad, unduly burdensome, irrelevant, and would require intervention by the Panel. Responding to discovery on a piecemeal basis is inefficient, expensive, and time consuming for ICANN, such that ICANN needs finality from the Panel on the scope of the Requests before fully completing the collection and review process (particularly because many of Claimant's Requests date back nearly ten years). Importantly,

[44] Motion, p. 12.

[45] ICANN agrees to prepare a privilege log by 17 March 2023, assuming that Claimant is willing to do the same for any responsive documents that it is withholding on the basis of the attorney-client privilege, work product doctrine, or any other applicable privilege.

[46] Motion, p. 12.

Claimant itself has not produced a single document to ICANN, yet Claimant feels compelled to chastise ICANN for the same conduct.[47]

52. ICANN also attempted to streamline the discovery process by agreeing to proposed stipulated facts, but Claimant has refused to engage with ICANN. ICANN provided Claimant with these stipulated facts within thirty days of receiving Claimant's Requests, and the stipulated facts should have resolved any issues for at least eight of the Requests. To date, Claimant has not agreed to narrow or withdraw any Requests covered by the proposed stipulated facts.

53. Finally, Claimant contends that the "volume of ICANN's objections and failure to produce the requested documents has prejudiced the Claimant by needlessly increasing Claimant's costs and reducing the time allotted for Claimant to prepare for the IRP hearing."[48] Claimant's contention is absurd. It is Claimant's overbroad Requests and Claimant's refusal to engage with ICANN on the proposed stipulated facts that are unreasonably increasing the costs of this IRP. Moreover, it is inconceivable that Claimant allegedly has been prejudiced in its preparation for the IRP hearing, given that the IRP hearing is not scheduled until next October and given that the deadline for both parties to complete document production is not until 3 March 2023.

54. Accordingly, Claimant's request to move up the deadline to complete document production by over two months is unwarranted, contrary to Procedural Order No. 4, and completely unrealistic given this dispute regarding the scope of the Requests.

---

[47] Claimant also criticizes ICANN for objecting to each of Claimant's Requests. Yet, ICANN surely is entitled to preserve its objections to Claimant's overbroad Requests, which is commonplace in litigation. Indeed, Claimant itself objected to each and every one of ICANN's requests.

[48] Motion, p. 13.

CONCLUSION

55. For the foregoing reasons, ICANN respectfully requests that the Panel deny Claimant's Motion in its entirety. To the extent the Panel grants any part of Claimant's Motion, ICANN requests that the Panel condition its order on Claimant paying part or all of ICANN's costs in responding to the Requests, including the costs of ICANN's eDiscovery vendor and reasonable attorneys' fees.

Respectfully submitted,
JONES DAY

Dated: 11 November 2022

By: */s/ Eric P. Enson*
Eric P. Enson

Counsel for Respondent ICANN

Ex. R-34

RESPONDENT'S EXHIBIT

Exhibit R-34

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 2 June 2022

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

ARTICLE 2 POWERS

ARTICLE 3 TRANSPARENCY

ARTICLE 4 ACCOUNTABILITY AND REVIEW

ARTICLE 5 OMBUDSMAN

ARTICLE 6 EMPOWERED COMMUNITY

ARTICLE 7 BOARD OF DIRECTORS

ARTICLE 8 NOMINATING COMMITTEE

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

ARTICLE 12 ADVISORY COMMITTEES

ARTICLE 13 OTHER ADVISORY MECHANISMS

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

ARTICLE 15 OFFICERS

ARTICLE 16 POST-TRANSITION IANA (Internet Assigned Numbers Authority) ENTITY

ARTICLE 17 CUSTOMER STANDING COMMITTEE

ARTICLE 18 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEWS

ARTICLE 19 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION SEPARATION PROCESS

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

ARTICLE 21 GENERAL PROVISIONS

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

ARTICLE 23 MEMBERS

ARTICLE 24 OFFICES AND SEAL

ARTICLE 25 AMENDMENTS

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN (Internet Corporation for Assigned Names and Numbers)'S ASSETS

ARTICLE 27 TRANSITION ARTICLE

ANNEX A: GNSO (Generic Names Supporting Organization) POLICY DEVELOPMENT PROCESS

ANNEX A-1: GNSO (Generic Names Supporting Organization) EXPEDITED POLICY DEVELOPMENT PROCESS

ANNEX A-2: GNSO (Generic Names Supporting Organization) GUIDANCE PROCESS

ANNEX B: CCNSO POLICY-DEVELOPMENT PROCESS

ANNEX C: THE SCOPE OF THE CCNSO

ANNEX D: EC (Empowered Community) MECHANISM

ANNEX E: CARETAKER ICANN (Internet Corporation for Assigned Names and Numbers) BUDGET PRINCIPLES

ANNEX F: CARETAKER IANA (Internet Assigned Numbers Authority) BUDGET PRINCIPLES

ANNEX G-1

ANNEX G-2

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN (Internet Corporation for Assigned Names and Numbers)**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN (Internet Corporation for Assigned Names and Numbers):

> (i) Coordinates the allocation and assignment of names in the root zone of the Domain Name (Domain Name) System ("**DNS (Domain Name System)**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is to coordinate the development and implementation of policies:
>
> - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS (Domain Name System) including, with respect to gTLD (generic Top Level Domain) registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
> - That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

> The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD (generic Top Level Domain) registrars and registries shall be deemed to be within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.
>
> (ii) Facilitates the coordination of the operation and evolution of the DNS (Domain Name System) root name server system.
>
> (iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol (Protocol) numbers and Autonomous System numbers. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF (Internet Engineering Task Force)**") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.
>
> (iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN (Internet Corporation for Assigned Names and Numbers)'s scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not act outside its Mission.

(c) ICANN (Internet Corporation for Assigned Names and Numbers) shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN (Internet Corporation for Assigned Names and Numbers) does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

> (i) the foregoing prohibitions are not intended to limit ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;
>
> (ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN (Internet Corporation for Assigned Names and Numbers)'s performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (Internet Corporation for Assigned Names and Numbers) (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission or otherwise exceed the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation ("**Articles of Incorporation**"):
>
> (A)
>
> > (1) all registry agreements and registrar accreditation agreements between ICANN (Internet Corporation for Assigned Names and Numbers) and registry operators or registrars in force on 1 October 2016 [1], including, in each case, any terms or conditions therein that are not

> contained in the underlying form of registry agreement and registrar accreditation agreement;
>
> (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B)any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C)ICANN (Internet Corporation for Assigned Names and Numbers)'s Five-Year Strategic Plan and Five-Year Operating Plan (Five-Year Operating Plan) existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN (Internet Corporation for Assigned Names and Numbers).

(iv) ICANN (Internet Corporation for Assigned Names and Numbers) shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2. COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) will act in a manner that complies with and reflects ICANN (Internet Corporation for Assigned Names and Numbers)'s Commitments and respects ICANN (Internet Corporation for Assigned Names and Numbers)'s Core Values, each as described below.

(a) **COMMITMENTS**

In performing its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN (Internet Corporation for Assigned Names and Numbers) commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

> (i) Preserve and enhance the administration of the DNS (Domain Name System) and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS (Domain Name System) and the Internet;
>
> (ii) Maintain the capacity and ability to coordinate the DNS (Domain Name System) at the overall level and work for the maintenance of a single, interoperable Internet;
>
> (iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN (Internet Corporation for Assigned Names and Numbers)'s activities to matters that are within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and require or significantly benefit from global coordination;
>
> (iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of

governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN (Internet Corporation for Assigned Names and Numbers) in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

(i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN (Internet Corporation for Assigned Names and Numbers) and relevant external expert bodies;

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS (Domain Name System) market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN (Internet Corporation for Assigned Names and Numbers) outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN (Internet Corporation for Assigned Names and Numbers) to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN (Internet Corporation for Assigned Names and Numbers)'s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

ARTICLE 2 POWERS

Section 2.1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "of all Directors."

Section 2.2. RESTRICTIONS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not act as a Domain Name (Domain Name) System Registry or Registrar or Internet Protocol (Protocol) Address Registry in competition with entities affected by the policies of ICANN (Internet Corporation for Assigned Names and Numbers). Nothing in this Section 2.2 is intended to prevent ICANN (Internet Corporation for Assigned Names and Numbers) from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 2.3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE 3 TRANSPARENCY

Section 3.1. OPEN AND TRANSPARENT

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN (Internet Corporation for Assigned Names and Numbers) shall also implement procedures for the documentation and public disclosure of

the rationale for decisions made by the Board and ICANN (Internet Corporation for Assigned Names and Numbers)'s constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain a publicly-accessible Internet World Wide Web site (the "**Website**"), which may include, among other things, (a) a calendar of scheduled meetings of the Board, the EC (Empowered Community) (as defined in Section 6.1(a)), Supporting Organizations (Supporting Organizations) (as defined in Section 11.1), and Advisory Committees (Advisory Committees) (as defined in Section 12.1); (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices and agendas as described below; (d) information on the ICANN (Internet Corporation for Assigned Names and Numbers) Budget (as defined in Section 22.4(a)(i)), the IANA (Internet Assigned Numbers Authority) Budget (as defined in Section 22.4(b)(i)), annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN (Internet Corporation for Assigned Names and Numbers) activities of interest to significant segments of the ICANN (Internet Corporation for Assigned Names and Numbers) community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN (Internet Corporation for Assigned Names and Numbers)'s physical meetings and public forums; and (i) other information of interest to the ICANN (Internet Corporation for Assigned Names and Numbers) community.

Section 3.3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation, or such other title as shall be determined by the President, that shall be responsible, under the direction of the President, for coordinating the various aspects of public participation in ICANN (Internet Corporation for Assigned Names and Numbers), including the Website and various other means of communicating with and receiving input from the general community of Internet users.

Section 3.4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

Section 3.5. MINUTES AND PRELIMINARY REPORTS

a. All minutes of meetings of the Board, the Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations) (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary ("**Secretary**") for posting on the Website. All proceedings of the EC (Empowered Community) Administration (as defined in Section 6.3) and the EC (Empowered Community) shall be provided to the Secretary for posting on the Website.

b. No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is

prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the resolutions made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (Supporting Organizations) (as set forth in Article 9 through Article 11) and Advisory Committees (Advisory Committees) (as set forth in Article 12) informing them that the resolutions have been posted.

c. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.

d. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN (Internet Corporation for Assigned Names and Numbers)), matters that ICANN (Internet Corporation for Assigned Names and Numbers) is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN (Internet Corporation for Assigned Names and Numbers) shall:

> (i) provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;
>
> (ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment practices), prior to any action by the Board; and
>
> (iii) in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee (Advisory Committee) ("**GAC (Governmental Advisory Committee)**" or "**Governmental Advisory Committee (Advisory Committee)**") and take duly into account any advice timely presented by the Governmental Advisory Committee (Advisory Committee) on its own initiative or at the Board's request.

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS (Domain Name System), financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.

(d) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice (as defined in Section 12.2(a)(x)), the Board shall make a determination whether the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a "**GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution**") and shall cite the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. To the extent practical, the Board shall ensure that GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolutions only relate to the matters that were the subject of the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and not matters unrelated to the applicable GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. For the avoidance of doubt: (i) a GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are specifically identified as such by the Board; and (ii) a Board resolution approving an action consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice received during a standard engagement process in which input from all Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) has been requested shall not be considered a GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution based solely on that input, unless the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution.

(e) GAC (Governmental Advisory Committee) Carve-out

(i) Where a Board resolution is consistent with GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and the Board has determined that the GAC (Governmental Advisory Committee) Consensus (Consensus) Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution, the Governmental Advisory Committee (Advisory Committee) shall not participate as a decision-maker in the EC (Empowered Community)'s exercise of its right to challenge the Board's implementation of such GAC (Governmental Advisory Committee) Consensus (Consensus) Advice. In such cases, the Governmental Advisory Committee (Advisory Committee) may participate in the EC (Empowered Community) in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC (Empowered Community) ("**GAC (Governmental Advisory Committee) Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC (Governmental Advisory Committee) Carve-out shall only apply if an IRP Panel has found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC (Governmental Advisory Committee) Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC (Governmental Advisory Committee) Consensus (Consensus) Board Resolution and the line item or provision that implements such specific GAC (Governmental Advisory Committee) Consensus (Consensus)

Board Resolution ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Statement**"), (B) the Governmental Advisory Committee (Advisory Committee) shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section 1.1 of Annex D), and (C) any EC (Empowered Community) Decision (as defined in Section 4.1(a) of Annex D) that requires the support of four or more Decisional Participants (as defined in Section 6.1(a)) pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.

(iii) For the avoidance of doubt, the GAC (Governmental Advisory Committee) Carve-out shall not apply to the exercise of the EC (Empowered Community)'s rights where a material factor in the Board's decision was advice of the Governmental Advisory Committee (Advisory Committee) that was not GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN (Internet Corporation for Assigned Names and Numbers) shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

(a) ICANN (Internet Corporation for Assigned Names and Numbers) shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors directly.

(b) The EC (Empowered Community) may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC (Empowered Community) of these Bylaws. The EC (Empowered Community) Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC (Empowered Community) for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN (Internet Corporation for Assigned Names and Numbers) action or inaction ("**Reconsideration Request**") to the extent that the Requestor has been adversely affected by:

(i) One or more Board or Staff actions or inactions that contradict ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, Commitments, Core Values and/or established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies);

(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

(i) Disputes relating to country code top-level domain ("**ccTLD (Country Code Top Level Domain)**") delegations and re-delegations;

(ii) Disputes relating to Internet numbering resources; and

(iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board Accountability Mechanisms Committee to review and consider Reconsideration Requests. The Board Accountability Mechanisms Committee shall have the authority to:

(i) Evaluate Reconsideration Requests;

(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;

(iii) Evaluate Reconsideration Requests for urgent consideration;

(iv) Conduct whatever factual investigation is deemed appropriate;

(v) Request additional written submissions from the affected party, or from other parties; and

(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN (Internet Corporation for Assigned Names and Numbers) reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Accountability Mechanisms Committee:

(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:

(A)for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;

(B)for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or

(C)for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at https://www.icann.org/resources/pages/accountability/reconsideration-en. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request, not including exhibits. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board Accountability Mechanisms Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Accountability Mechanisms Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Accountability Mechanisms Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her

> role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(m) The Board Accountability Mechanisms Committee may ask ICANN (Internet Corporation for Assigned Names and Numbers) Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

(n) The Board Accountability Mechanisms Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board Accountability Mechanisms Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation.

(o) The Board Accountability Mechanisms Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation. Any information collected by ICANN (Internet Corporation for Assigned Names and Numbers) from third parties shall be provided to the Requestor.

(p) The Board Accountability Mechanisms Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN (Internet Corporation for Assigned Names and Numbers) Staff, and by any third party.

(q) The Board Accountability Mechanisms Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Accountability Mechanisms Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the Reconsideration Request. The final recommendation of the Board Accountability Mechanisms Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Accountability Mechanisms Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

(r) The Board shall not be bound to follow the recommendations of the Board Accountability Mechanisms Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Accountability Mechanisms Committee within 45 days of receipt of the Board Accountability Mechanisms Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Accountability Mechanisms Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's

posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board Accountability Mechanisms Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN (Internet Corporation for Assigned Names and Numbers) maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s redaction.

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

(t) The Board Accountability Mechanisms Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Accountability Mechanisms Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Accountability Mechanisms Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Accountability Mechanisms Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

(u) The Board Accountability Mechanisms Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

> (i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;
>
> (ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;
>
> (iii) an explanation of any other mechanisms available to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to persons materially affected by its decisions; and
>
> (iv) whether or not, in the Board Accountability Mechanisms Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN (Internet Corporation for Assigned Names and Numbers) decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Exhibit R-34

Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in Section 4.2, ICANN (Internet Corporation for Assigned Names and Numbers) shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("**IRP**"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

(i) Ensure that ICANN (Internet Corporation for Assigned Names and Numbers) does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.

(ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in Section 4.3(b)(i)).

(iii) Ensure that ICANN (Internet Corporation for Assigned Names and Numbers) is accountable to the global Internet community and Claimants.

(iv) Address claims that ICANN (Internet Corporation for Assigned Names and Numbers) has failed to enforce its rights under the IANA (Internet Assigned Numbers Authority) Naming Function Contract (as defined in Section 16.3(a)).

(v) Provide a mechanism by which direct customers of the IANA (Internet Assigned Numbers Authority) naming functions may seek resolution of PTI (as defined in Section 16.1) service complaints that are not resolved through mediation.

(vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in Section 15.1), Staff members, Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and the global Internet community in connection with policy development and implementation.

(vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.

(viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.

(ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes of the IRP.

(b) The scope of the IRP is defined with reference to the following terms:

(i) A "**Claimant**" is any legal or natural person, group, or entity including, but not limited to the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (Advisory Committee) that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

(A)The EC (Empowered Community) is deemed to be materially affected by all Covered Actions. ICANN (Internet Corporation for Assigned Names and Numbers) shall not assert any defenses of standing or capacity against the EC (Empowered Community) in any forum.

(B)ICANN (Internet Corporation for Assigned Names and Numbers) shall not object to the standing of the EC (Empowered Community), a Supporting Organization (Supporting Organization), or an Advisory Committee (Advisory Committee) to participate in an IRP, to compel an IRP, or to enforce an IRP decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel (as defined in Section 4.3(g)) concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.

(ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN (Internet Corporation for Assigned Names and Numbers) committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.

(iii) "**Disputes**" are defined as:

(A)Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

(1) exceeded the scope of the Mission;

(2) resulted from action taken in response to advice or input from any Advisory Committee (Advisory Committee) or Supporting Organization (Supporting Organization) that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC (Empowered Community) as set forth in the Articles of Incorporation or Bylaws.

(B)Claims that ICANN (Internet Corporation for Assigned Names and Numbers), the Board, individual Directors, Officers or Staff members have not enforced ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and

(C)Claims regarding PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions that are not resolved through mediation.

(c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

(i) EC (Empowered Community) challenges to the result(s) of a PDP (Policy Development Process), unless the Supporting Organization (Supporting Organization)(s) that approved the PDP (Policy Development Process) supports the EC (Empowered Community) bringing such a challenge;

(ii) Claims relating to ccTLD (Country Code Top Level Domain) delegations and re-delegations;

(iii) Claims relating to Internet numbering resources, and

(iv) Claims relating to protocol parameters.

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC (Empowered Community) to commence an IRP ("**Community IRP**"), the EC (Empowered Community) shall first comply with the procedures set forth in Section 4.2 of Annex D.

(e) Cooperative Engagement Process

(i) Except for Claims brought by the EC (Empowered Community) in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.

(ii) The CEP is voluntary. However, except for Claims brought by the EC (Empowered Community) in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the IRP, the IRP Panel shall award to ICANN (Internet Corporation for Assigned Names and Numbers) all reasonable fees and costs incurred by ICANN (Internet Corporation for Assigned Names and Numbers) in the IRP, including legal fees.

(iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("**IRP Mediator**") after at least one CEP meeting.

(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

(f) ICANN (Internet Corporation for Assigned Names and Numbers) hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code ("**CCC**") against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure (as defined in Section 4.3(n)(i)). Following the selection of an IRP Panel, that IRP Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN (Internet Corporation for Assigned Names and Numbers)'s written response ("**Response**") in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is timely filed by ICANN (Internet Corporation for Assigned Names and Numbers), the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.

(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP

Panel.

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.

(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.

(iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

(iv) With respect to claims that ICANN (Internet Corporation for Assigned Names and Numbers) has not enforced its contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA (Internet Assigned Numbers Authority) Naming Function Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the "**Standing Panel**") each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN (Internet Corporation for Assigned Names and Numbers) on the workings and management of the Internet's unique identifiers and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).

(ii) ICANN (Internet Corporation for Assigned Names and Numbers) shall, in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

(A)ICANN (Internet Corporation for Assigned Names and Numbers), in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the "**IRP Implementation Oversight Team**" (described in Section 4.3(n)(i)) on a draft tender document.

(B)ICANN (Internet Corporation for Assigned Names and Numbers) shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations

(Supporting Organizations) and Advisory Committees (Advisory Committees) and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C)The Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D)Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.

(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.

(iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region (as defined in Section 7.5).

(k) IRP Panel

(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.

(ii) The Claimant and ICANN (Internet Corporation for Assigned Names and Numbers) shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN (Internet Corporation for Assigned Names and Numbers) shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider's rules shall apply to selection of the third panelist.

(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members' individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.

(iv) Upon request of an IRP Panel, the IRP Panel shall have access to independent skilled technical experts at the expense of ICANN (Internet Corporation for Assigned Names and Numbers), although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.

(v) IRP Panel decisions shall be made by a simple majority of the IRP Panel.

(l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.

(m) IRP Provider

(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider ("**IRP Provider**"). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other

submissions arising from an IRP at the direction of the IRP Panel, and shall function independently from ICANN (Internet Corporation for Assigned Names and Numbers).

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), and take effect upon approval by the Board, such approval not to be unreasonably withheld.

(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

(B)Issues relating to joinder, intervention, and consolidation of Claims;

(C)Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant's Claim and in support of ICANN (Internet Corporation for Assigned Names and Numbers)'s Response;

(D)Availability and limitations on discovery methods;

(E)Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F)Procedures if ICANN (Internet Corporation for Assigned Names and Numbers) elects not to respond to an IRP; and

(G)The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN (Internet Corporation for Assigned Names and Numbers) failed to enforce ICANN (Internet Corporation for Assigned Names and Numbers)'s contractual rights with respect to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or resolve PTI service complaints by direct customers of the IANA (Internet Assigned Numbers Authority) naming functions, as applicable;

(iv) Recommend that ICANN (Internet Corporation for Assigned Names and Numbers) stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) Determine the timing for each IRP proceeding; and

(vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN (Internet Corporation for Assigned Names and Numbers) action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider's rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

(i) A harm for which there will be no adequate remedy in the absence of such relief;

(ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and

(iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

(i) Standing Panel members must be independent of ICANN (Internet Corporation for Assigned Names and Numbers) and its Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), and so must adhere to the following criteria:

(A)Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(B)Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN (Internet

Corporation for Assigned Names and Numbers) positions.

(ii) The IRP Provider shall disclose any material relationship with ICANN (Internet Corporation for Assigned Names and Numbers), a Supporting Organization (Supporting Organization), an Advisory Committee (Advisory Committee), or any other participant in an IRP proceeding.

(r) ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

(t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.

(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.

(v) Subject to this Section 4.3, all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.

(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.

(x) The IRP is intended as a final, binding arbitration process.

(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over ICANN (Internet Corporation for Assigned Names and Numbers) without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) ICANN (Internet Corporation for Assigned Names and Numbers) intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.

(A)Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B)If an IRP Panel decision in a Community IRP is in favor of the EC (Empowered Community), the Board shall comply within 30 days of such IRP Panel decision.

(C)If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC (Empowered Community) may seek enforcement in a court of competent jurisdiction. In the case of the EC (Empowered Community), the EC (Empowered Community) Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN (Internet Corporation for Assigned Names and Numbers) agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN (Internet Corporation for Assigned Names and Numbers) shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.

Section 4.4. PERIODIC REVIEW OF ICANN (Internet Corporation for Assigned Names and Numbers) STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization (Supporting Organization), each Supporting Organization (Supporting Organization) Council, each Advisory Committee (Advisory Committee) (other than the Governmental Advisory Committee (Advisory Committee)), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a continuing purpose in the ICANN (Internet Corporation for Assigned Names and Numbers) structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies, stakeholder groups, organizations and other stakeholders.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN (Internet Corporation for Assigned Names and Numbers) being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC (Empowered Community) under the Articles of Incorporation and these Bylaws.

(b) The Governmental Advisory Committee (Advisory Committee) shall provide its own review mechanisms.

Section 4.5. ANNUAL REVIEW

ICANN (Internet Corporation for Assigned Names and Numbers) will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required bySection 4.6 and the status of ICANN (Internet Corporation for Assigned Names and Numbers)'s implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers). The Operating Standards must be aligned with the following guidelines:

(A)Each Supporting Organization (Supporting Organization) and Advisory Committee (Advisory Committee) participating in the applicable review may nominate up to seven prospective members for the review team;

(B)Any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

(C)If any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) shall be responsible for the determination of whether all 21 SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN (Internet Corporation for Assigned Names and Numbers) shall pay the reasonable fees and expenses of such experts for each review contemplated by this Section 4.6 to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding ICANN (Internet Corporation for Assigned Names and Numbers)'s deliberations and operations, the review teams, or a subset thereof, shall have access to ICANN (Internet Corporation for Assigned Names and Numbers) internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

(1) ICANN (Internet Corporation for Assigned Names and Numbers) must provide a justification for any refusal to reveal requested information. ICANN (Internet Corporation for Assigned Names and Numbers)'s refusal can be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board for a ruling on the disclosure request.

(2) ICANN (Internet Corporation for Assigned Names and Numbers) may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. ICANN (Internet Corporation for Assigned Names and Numbers)'s designation of documents may also be appealed to the Ombudsman and/or the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

(3) ICANN (Internet Corporation for Assigned Names and Numbers) may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN (Internet Corporation for Assigned Names and Numbers)'s present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC (Governmental Advisory Committee)'s interaction with the Board and with the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and making recommendations for improvement to ensure effective consideration by ICANN (Internet Corporation for Assigned Names and Numbers) of GAC (Governmental Advisory Committee) input on the public policy aspects of the technical coordination of the DNS (Domain Name System);

(C) assessing and improving the processes by which ICANN (Internet Corporation for Assigned Names and Numbers) receives public input (including adequate explanation of decisions taken and the rationale thereof);

(D) assessing the extent to which ICANN (Internet Corporation for Assigned Names and Numbers)'s decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security (Security – Security, Stability and Resiliency (SSR)), Stability (Security, Stability and Resiliency), and Resiliency (Security Stability & Resiliency (SSR)) Review

(i) The Board shall cause a periodic review of ICANN (Internet Corporation for Assigned Names and Numbers)'s execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN (Internet Corporation for Assigned Names and Numbers) coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN (Internet Corporation for Assigned Names and Numbers) coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN (Internet Corporation for Assigned Names and Numbers) has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS (Domain Name System), and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS (Domain Name System), consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN (Internet Corporation for Assigned Names and Numbers) will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS (Domain Name System) pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD (generic Top Level Domain) Round**").

(ii) After a New gTLD (generic Top Level Domain) Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT (Competition, Consumer Choice & Consumer Trust) Review**").

(iii) The review team for the CCT (Competition, Consumer Choice & Consumer Trust) Review ("**CCT (Competition, Consumer Choice & Consumer Trust) Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD (generic Top Level Domain) Round's application and evaluation process and safeguards put in place to mitigate issues arising from the New gTLD (generic Top Level Domain) Round.

(iv) For each of its recommendations, the CCT (Competition, Consumer Choice & Consumer Trust) Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT (Competition, Consumer Choice & Consumer Trust) Review Team shall also assess the extent to which prior CCT (Competition, Consumer Choice & Consumer Trust) Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN (Internet Corporation for Assigned Names and Numbers) shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD (generic Top Level Domain) registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("**OECD (Organization for Economic Co-operation and Development)**") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD (Organization for Economic Co-operation and Development) in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

Section 4.7. COMMUNITY MEDIATION

(a) If the Board refuses or fails to comply with a duly authorized and valid EC (Empowered Community) Decision under these Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC (Empowered Community) Decision if the Board has not complied with the EC (Empowered Community) Decision within 30 days of being notified of the relevant EC (Empowered Community) Decision.

(b) If a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) is delivered to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC (Empowered Community) Administration shall designate individuals to represent the EC (Empowered Community) in the mediation ("**Mediation Administration**") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC (Empowered Community) Administration and the Board can designate themselves as representatives. ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Initiation Notice on the Website.

(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of at least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new slate until a mutually-agreed mediator is selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS (Domain Name System) and ICANN (Internet Corporation for Assigned Names and Numbers). The mediator may not have any ongoing business relationship with ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community). The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN (Internet Corporation for Assigned Names and Numbers), any Supporting Organization (Supporting Organization) (or constituent thereof), any Advisory Committee (Advisory Committee) (or constituent thereof), the EC (Empowered Community) Administration or the EC (Empowered Community).

(e) The mediator shall conduct the mediation in accordance with these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually-agreed between the Mediation Administration and Board Mediation Representatives.

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall bear all costs of the mediator.

(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation

Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.

(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations ("**Mediation Resolution**" and the date of such resolution, the "**Mediation Resolution Date**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC (Empowered Community) Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC (Empowered Community) shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC (Empowered Community) Community IRP Initiation Notice (as defined in Section 4.2(e) of Annex D) pursuant to and in compliance with Section 4.2 of Annex D within eighty (80) days following the Mediation Resolution Date.

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

(b) The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.

(c) The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN (Internet Corporation for Assigned Names and Numbers) Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN (Internet Corporation for Assigned Names and Numbers) Budget recommended by the ICANN (Internet Corporation for Assigned Names and Numbers) President to the Board. Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who believe that the ICANN (Internet Corporation for Assigned Names and Numbers) staff, Board or an ICANN (Internet Corporation for Assigned Names and Numbers) constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN (Internet Corporation for Assigned Names and Numbers) staff, the Board, or ICANN (Internet Corporation for Assigned Names and Numbers) constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

With respect to the Reconsideration Request Process set forth in Section 4.2 , the Ombudsman shall serve the function expressly provided for in Section 4.2 .

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

(a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN (Internet Corporation for Assigned Names and Numbers) community (excluding employees and vendors/suppliers of ICANN (Internet Corporation for Assigned Names and Numbers)) may have with specific actions or failures to act by the Board or ICANN (Internet Corporation for Assigned Names and Numbers) staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;

(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;

(c) exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN (Internet Corporation for Assigned Names and Numbers)'s interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;

(d) have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN (Internet Corporation for Assigned Names and Numbers) staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN (Internet Corporation for Assigned Names and Numbers));

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN (Internet Corporation for Assigned Names and Numbers) community and online availability;

(f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and

(g) comply with all ICANN (Internet Corporation for Assigned Names and Numbers) conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN (Internet Corporation for Assigned Names and Numbers) AND OUTSIDE ENTITIES

(a) No ICANN (Internet Corporation for Assigned Names and Numbers) employee, Board member, or other participant in Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) shall prevent or impede the Ombudsman's contact with the ICANN (Internet Corporation for Assigned Names and Numbers) community (including employees of ICANN (Internet Corporation for Assigned Names and Numbers)). ICANN (Internet Corporation for Assigned Names and Numbers) employees and Board members shall direct members of the ICANN (Internet Corporation for Assigned Names and Numbers) community who voice problems, concerns, or complaints about ICANN (Internet Corporation for Assigned Names and Numbers) to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) staff and other ICANN (Internet Corporation for Assigned Names and Numbers) participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN (Internet Corporation for Assigned Names and Numbers) of any particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

(e) The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN (Internet Corporation for Assigned Names and Numbers) structure, procedures, processes, or any conduct by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, staff, or constituent bodies.

Section 5.5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

(a) The Empowered Community ("**EC (Empowered Community)**") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization) (as defined in Section 10.1), the GNSO (Generic Names Supporting Organization) (as defined in Section 11.1), the ALAC (At-Large Advisory Committee) (as defined in Section 12.2(d)(i)) and the GAC (Governmental Advisory Committee) (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC (Empowered Community) and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC (Empowered Community), and the terms contained herein and in these Bylaws relating to the EC (Empowered Community) shall be the EC (Empowered Community)'s "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2 . Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC (Empowered Community) as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees)), and any corresponding changes in the voting thresholds for exercise of the EC (Empowered Community)'s rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC (Empowered Community) may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

(c) The sole purpose of the EC (Empowered Community) is to exercise its rights and perform its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and these Bylaws, and the EC (Empowered Community) shall have no other powers or rights except as expressly provided therein. The EC (Empowered Community) may only act as provided in these Bylaws. Any act of the EC (Empowered Community) that is not in accordance with these Bylaws shall not be effective.

(d) The EC (Empowered Community) shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC (Empowered Community) shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)).

(e) Decisional Participants shall not transfer their right to be an associate of the EC (Empowered Community). Any attempted transfer by any Decisional Participant of its right to be an associate of the EC (Empowered Community) shall be void ab initio.

(f) The location and street address of the EC (Empowered Community) shall be the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.

Section 6.2. POWERS AND ACKNOWLEDGMENTS

(a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC (Empowered Community) shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

(i) Appoint and remove individual Directors (other than the President);

(ii) Recall the entire Board;

(iii) Reject ICANN (Internet Corporation for Assigned Names and Numbers) Budgets, IANA (Internet Assigned Numbers Authority) Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));

(iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));

(v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article 26(a));

(vi) Reject PTI Governance Actions (as defined in Section 16.2(d));,

(vii) Require the ICANN (Internet Corporation for Assigned Names and Numbers) Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));

> (viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and
>
> (ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

(b) The EC (Empowered Community) may pursue an action in any court with jurisdiction over ICANN (Internet Corporation for Assigned Names and Numbers) to enforce the EC (Empowered Community)'s rights under these Bylaws. ICANN (Internet Corporation for Assigned Names and Numbers) acknowledges the EC (Empowered Community)'s legal personhood and shall not raise the EC (Empowered Community)'s legal personhood as a defense in any proceeding between ICANN (Internet Corporation for Assigned Names and Numbers) and the EC (Empowered Community). ICANN (Internet Corporation for Assigned Names and Numbers) shall not assert as a defense that prior filing or completion of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC (Empowered Community)'s power to appoint or remove an individual Director or recall the Board (except to the extent an IRP Panel award is applicable pursuant to Section 3.6(e)).

(c) By nominating a Director for designation by the EC (Empowered Community) or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC (Empowered Community) pursuant to these Bylaws, the EC (Empowered Community) and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby.

Section 6.3. EC (Empowered Community) ADMINISTRATION

(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the "**EC (Empowered Community) Administration**"). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC (Empowered Community) Administration.

(b) In representing a Decisional Participant on the EC (Empowered Community) Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

(c) In representing the EC (Empowered Community) Administration, the individuals serving thereon shall act as required for the EC (Empowered Community) to follow the applicable procedures in Annex D, and to implement EC (Empowered Community) decisions made in accordance with such procedures.

(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be provided by the Decisional Participant's representative on the EC (Empowered Community) Administration. All communications and notices required or permitted to be given under these Bylaws by the EC (Empowered Community) shall be provided by any member of the EC (Empowered Community) Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC (Empowered Community) and the Decisional Participants shall provide a copy of the notice to the Secretary in accordance with Section 21.5, and ICANN (Internet Corporation for Assigned Names and Numbers) shall post it on the Website.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall be entitled to rely on notices from a Decisional Participant's representative or an individual serving on the EC (Empowered Community) Administration delivered in accordance with Section 21.5 as evidence that the actions set forth therein have been approved by or are the actions of the Decisional Participant, the EC (Empowered Community) or the EC (Empowered Community) Administration, as applicable, pursuant to and in compliance with the requirements of these Bylaws (including Annex D) .

(f) No person participating in the EC (Empowered Community), the EC (Empowered Community) Administration or a Decisional Participant shall be liable for any debt, obligation or liability of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community), other than in the case of a fraudulent act committed by such person.

Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

In the event the EC (Empowered Community) Administration receives from the Secretary a valid notice as described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC (Empowered Community) shall without deliberation consent to such removal, and the EC (Empowered Community) Administration shall provide notice to the Secretary of such consent.

ARTICLE 7 BOARD OF DIRECTORS

Section 7.1. COMPOSITION OF THE BOARD

The ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors ("**Board**") shall consist of sixteen voting directors ("**Directors**"). In addition, four non-voting liaisons ("**Liaisons**") shall be appointed for the purposes set forth in Section 7.9. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the Board.

Section 7.2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIR AND VICE-CHAIR

(a) As of the effective date of the amendment and restatement of these Bylaws on 1 October 2016, the EC (Empowered Community) shall be the sole designator of ICANN (Internet Corporation for Assigned Names and Numbers) and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio. The EC (Empowered Community) shall notify promptly the Secretary in writing of the following designations:

> (i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seats 1 through 8.
>
> (ii) Two Directors nominated by the ASO (Address Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.
>
> (iii) Two Directors nominated by the ccNSO (Country Code Names Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.
>
> (iv) Two Directors nominated by the GNSO (Generic Names Supporting Organization) to be designated as Directors by the EC (Empowered Community). These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.
>
> (v) One Director nominated by the At-Large Community to be designated as Directors by the EC (Empowered Community). This seat on the Board is referred to in these Bylaws as Seat 15.

In addition to the Directors designated by the EC (Empowered Community), the President shall serve ex officio as a Director. The seat held by the President on the Board is referred to in these Bylaws as Seat

16.

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC (Empowered Community), the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(c) In carrying out their responsibilities to nominate Directors for Seats 9 through 15 for designation by the EC (Empowered Community), the Supporting Organizations (Supporting Organizations) and the At-Large Community shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. The Supporting Organizations (Supporting Organizations) shall ensure that, at any given time, no two Directors nominated by a Supporting Organization (Supporting Organization) are citizens from the same country or of countries located in the same Geographic Region. For purposes of this Section 7.2(c), if any candidate for Director maintains citizenship or Domicile of more than one country, that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Supporting Organization (Supporting Organization) or the At-Large Community, as applicable, to use for nomination purposes. For purposes of this Section 7.2(c), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(d) The Board shall annually elect a Chair and a Vice-Chair from among the Directors, not to include the President.

(e) The EC (Empowered Community) shall designate each person nominated as a Director by the Nominating Committee, the ASO (Address Supporting Organization), the ccNSO (Country Code Names Supporting Organization), the GNSO (Generic Names Supporting Organization) and the At-Large Community in accordance with this Section 7.2.

(f) As a condition to sitting on the Board, each Director other than the President ex officio shall sign a pre-service letter pursuant to which such Director:

> (i) acknowledges and agrees to the EC (Empowered Community)'s right to remove the Director at any time and for any reason following the processes set forth in these Bylaws;
>
> (ii) acknowledges and agrees that serving as a Director shall not establish any employment or other relationship (whether to ICANN (Internet Corporation for Assigned Names and Numbers), the EC (Empowered Community), any body entitled to nominate a Director, or any of their agents) that provides any due process rights related to termination of service as a Director; and

(iii) conditionally and irrevocably resigns as a Director automatically effective upon communication to the Director or, in the case of Board recall, communication to the Board of a final determination of removal following the processes set forth in these Bylaws.

Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

(b) Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers) decisions on the global Internet community, and committed to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

(c) Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section 7.3;

(d) Persons who, in the aggregate, have personal familiarity with the operation of gTLD (generic Top Level Domain) registries and registrars; with ccTLD (Country Code Top Level Domain) registries; with IP (Internet Protocol or Intellectual Property) address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

(e) Persons who are able to work and communicate in written and spoken English.

Section 7.4. ADDITIONAL QUALIFICATIONS

(a) Notwithstanding anything herein to the contrary, no official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director. As used herein, the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies.

(b) No person who serves in any capacity (including as a liaison) on any Supporting Organization (Supporting Organization) Council shall simultaneously serve as a Director or Liaison to the Board. If such a person is identified by, or presents themselves to, the Supporting Organization (Supporting Organization) Council or the At-Large Community for consideration for nomination to serve as a Director, the person shall not thereafter participate in any discussion of, or vote by, the Supporting Organization (Supporting Organization) Council or the committee designated by the At-Large Community relating to the nomination of Directors by the Council or At-Large Community, until the Council or committee(s) specified by the At-Large Community has nominated the full complement of Directors it is responsible for nominating. In the event that a person serving in any capacity on a Supporting Organization (Supporting Organization) Council is considered for nomination to serve as a Director, the constituency group or other group or entity that selected the person may select a replacement for purposes of the Council's nomination process. In the event that a person serving in any capacity on the At-Large Advisory Committee (Advisory Committee) is identified as or accepts a nomination to be considered for nomination by the At-Large Community as a Director, the Regional At-Large Organization or other group or entity that selected the person may select a replacement for purposes of the At-Large Community's nomination process.

(c) Persons serving in any capacity on the Nominating Committee shall be ineligible for nomination or designation to positions on the Board as provided by Section 8.8.

(d) No person who serves on the EC (Empowered Community) Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC (Empowered Community) Administration and as a Director or Liaison to the Board.

Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization (Supporting Organization) and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization (Supporting Organization). One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no Geographic Region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "**Geographic Region**": (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section 7.5 shall be reviewed by the Board from time to time (and in any event at least once every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall require a statement from each Director not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers). Each Director shall be responsible for disclosing to ICANN (Internet Corporation for Assigned Names and Numbers) any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the CCC. In addition, each Director shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) any relationship or other factor that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CCC. The Board shall adopt policies specifically addressing Director, Officer, EC (Empowered Community) and Supporting Organization (Supporting Organization) conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7.7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN (Internet Corporation for Assigned Names and Numbers) and not as representatives of the EC (Empowered Community), the Nominating Committee, Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) that nominated them, as applicable, their employers, or any other organizations or constituencies.

Section 7.8. TERMS OF DIRECTORS

(a) The regular term of office of Director Seats 1 through 15 shall begin as follows:

> (i) The regular terms of Seats 1 through 3 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2003;
>
> (ii) The regular terms of Seats 4 through 6 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2004;
>
> (iii) The regular terms of Seats 7 and 8 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2005;

(iv) The terms of Seats 9 and 12 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2015;

(v) The terms of Seats 10 and 13 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2013; and

(vi) The terms of Seats 11, 14 and 15 shall begin at the conclusion of each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2014.

(b) Each Director holding any of Seats 1 through 15, including a Director nominated and designated to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been designated and qualified or until that Director resigns or is removed in accordance with these Bylaws. For the avoidance of doubt, the new governance provisions effective as of the amendment and restatement of these Bylaws on 1 October 2016 shall not have the effect of shortening or terminating the terms of any Directors serving at the time of the amendment and restatement.

(c) At least two months before the commencement of each annual meeting, the Nominating Committee shall give the EC (Empowered Community) Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC (Empowered Community) Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(d) At least six months before the date specified for the commencement of the term as specified in Section 7.8(a)(iv) through Section 7.8(a)(vi) above, any Supporting Organization (Supporting Organization) or the At-Large Community entitled to nominate a Director for a Seat with a term beginning that year shall give the EC (Empowered Community) Administration (with a copy to the Secretary and the Decisional Participants) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC (Empowered Community) Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

(f) The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

(i) One appointed by the Governmental Advisory Committee (Advisory Committee);

(ii) One appointed by the Root Server System Advisory Committee (Advisory Committee) established by Section 12.2(c);

(iii) One appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Section 12.2(b); and

(iv) One appointed by the Internet Engineering Task Force.

(b) The Liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a Liaison shall give the Secretary written notice of its appointment.

(c) Each Liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the Liaison resigns or is removed in accordance with these Bylaws.

(d) The Liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section 7.9(d) for the purpose of consulting with their respective committee or organization.

Section 7.10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

(a) Directors

> (i) Any Director designated by the EC (Empowered Community) may be removed without cause:
>
> (A) by the EC (Empowered Community) pursuant to and in compliance with procedures in Section 3.1 or Section 3.2 of Annex D, as applicable, or
>
> (B) following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that (x) each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director; and (y) such removal shall not be effective until the Secretary has provided notice to the EC (Empowered Community) Administration of the Board's removal vote and the requirements of Section 6.4 have been met.
>
> (ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of such removal, the Secretary shall promptly notify the EC (Empowered Community) Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with Section 7.12(a).
>
> (iii) All Directors (other than the President) may be removed at the same time by the EC (Empowered Community) by the EC (Empowered Community) Administration delivering an EC (Empowered Community) Board Recall Notice to the Secretary pursuant to and in compliance with Section 3.3 of Annex D. The vacancies created by such removal shall be filled by the EC (Empowered Community) in accordance with Section 7.12(b).

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee (Advisory Committee), any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The vacancies created by such removal shall

be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee (Advisory Committee) to consider the replacement of the Governmental Advisory Committee (Advisory Committee) Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 7.12. VACANCIES

(a) This Section 7.12(a) shall apply to Board vacancies other than those occurring by recall of all Directors (other than the President). A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Director or Interim Director (as defined in Section 7.12(b)), or if the authorized number of Directors is increased. Vacancies occurring in Seats 1 through 15 shall be filled by the EC (Empowered Community) after nomination as provided in Section 7.2 and Articles 8 through 12. A vacancy in Seat 16 shall be filled as provided in Article 15. A Director designated by the EC (Empowered Community) to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been designated and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a)(iii). Concurrently with delivery of any EC (Empowered Community) Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC (Empowered Community) Administration shall provide written notice of the EC (Empowered Community)'s designation of individuals to fill such vacancies (each such individual, an **"Interim Director"**) to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website. An Interim Director must meet the criteria specified in Section 7.3, Section 7.4 and Section 7.5, as applicable. An Interim Director shall hold office until the EC (Empowered Community) designates the Interim Director's successor in accordance with Section 7.12(a), and the successor's designation shall occur within 120 days of the Interim Director's designation. For avoidance of doubt, persons designated as Interim Directors may be eligible for designation as Directors as well.

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

Section 7.13. ANNUAL MEETINGS

Annual meetings of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting of ICANN (Internet Corporation for Assigned Names and Numbers) shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers), or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio formats on the Internet.

Section 7.14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7.15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chair of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN (Internet Corporation for Assigned Names and Numbers) unless otherwise specified in the notice of the meeting.

Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN (Internet Corporation for Assigned Names and Numbers). In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 7.17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 7.18. ACTIONS BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN (Internet Corporation for Assigned Names and Numbers) adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in person at such meeting. ICANN (Internet Corporation for Assigned Names and Numbers) shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone.

Section 7.19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote thereat shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote

of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 7.20. ELECTRONIC MAIL

If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN (Internet Corporation for Assigned Names and Numbers) shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 7.21. BOARD RIGHTS OF INSPECTION

(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN (Internet Corporation for Assigned Names and Numbers).

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 7.22. COMPENSATION

(a) Except for the President of ICANN (Internet Corporation for Assigned Names and Numbers), who serves ex officio as a Director, each of the Directors shall be entitled to receive compensation for his or her services as a Director. The President shall receive only his or her compensation for service as President and shall not receive additional compensation for service as a Director.

(b) If the Board determines to offer a compensation arrangement to one or more Directors (other than the President) for services to ICANN (Internet Corporation for Assigned Names and Numbers) as Directors, the Board shall follow the process that is calculated to pay an amount for service as a Director that is not an excess benefit under the standards set forth in Section 4958 of the Internal Revenue Code of 1986, as amended (the "**Code**").

(c) As part of the process, the Board shall retain an Independent Valuation Expert (as defined in Section 7.22(g)(i)) to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion (as defined in Section 7.22(g)(ii)) from such expert regarding the ranges of Reasonable Compensation (as defined in Section 7.22(g)(iii)) for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Board Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

(d) After having reviewed the Independent Valuation Expert's Reasoned Written Opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

(e) The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.

(f) In addition to authorizing payment of compensation for services as Directors as set forth in this Section 7.22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by Liaisons performing their duties as Directors or Liaisons.

(g) As used in this Section 7.22, the following terms shall have the following meanings:

(i) An "**Independent Valuation Expert**" means a person retained by ICANN (Internet Corporation for Assigned Names and Numbers) to value compensation arrangements that: (A) holds itself out to the public as a compensation consultant; (B) performs valuations regarding compensation arrangements on a regular basis, with a majority of its compensation consulting services performed for persons other than ICANN (Internet Corporation for Assigned Names and Numbers); (C) is qualified to make valuations of the type of services involved in any engagement by and for ICANN (Internet Corporation for Assigned Names and Numbers); (D) issues to ICANN (Internet Corporation for Assigned Names and Numbers) a Reasoned Written Opinion regarding a particular compensation arrangement; and (E) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (A) through (D) of this definition.

(ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN (Internet Corporation for Assigned Names and Numbers) to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental Advisory Committee (Advisory Committee) Liaison, shall be entitled to receive compensation for his or her services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 7.23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

Section 7.24 INTERIM BOARD

Except in circumstances in which urgent decisions are needed to protect the security, stability or resilience of the DNS (Domain Name System) or to the extent necessary to comply with its fiduciary obligations under applicable law, a Board that consists of a majority or more of Interim Directors (an "**Interim Board**") shall (a) consult with the chairs of the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) before making major decisions and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section 2.3 of Annex D) prior to taking any action that would, if implemented, materially change ICANN (Internet Corporation for Assigned Names and Numbers)'s

strategy, policies or management, including replacement of the then-serving President. Interim Directors shall be entitled to compensation as provided in this Article 7.

Section 7.25 COMMUNICATION OF DESIGNATION

Upon its receipt of nominations as provided in Articles 7 through 12, the EC (Empowered Community) Administration, on behalf of the EC (Empowered Community), shall promptly notify the Secretary of the EC (Empowered Community)'s designation of individuals to fill seats on the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall post all such designations promptly to the Website.

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN (Internet Corporation for Assigned Names and Numbers) ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

(a) A non-voting Chair, appointed by the Board;

(b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;

(c) A non-voting liaison appointed by the Root Server System Advisory Committee (Advisory Committee) established by Section 12.2(c);

(d) A non-voting liaison appointed by the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) established by Section 12.2(b);

(e) A non-voting liaison appointed by the Governmental Advisory Committee (Advisory Committee);

(f) Five voting delegates selected by the At-Large Advisory Committee (Advisory Committee) established by Section 12.2(d);

(g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization (Supporting Organization) established by Article 11, as follows:

> (i) One delegate from the Registries Stakeholder Group;
>
> (ii) One delegate from the Registrars Stakeholder Group;
>
> (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;

(iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));

(v) One delegate from the Intellectual Property Constituency; and

(vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

(h) One voting delegate each selected by the following entities:

(i) The Council of the Country Code Names Supporting Organization (Supporting Organization) established by Section 10.3;

(ii) The Council of the Address Supporting Organization (Supporting Organization) established by Section 9.2; and

(iii) The Internet Engineering Task Force.

(i) A non-voting Associate Chair, who may be appointed by the Chair, at his or her sole discretion, to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair, but shall not serve, temporarily or otherwise, in the place of the Chair.

Section 8.3. TERMS

(a) Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the immediately following ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

(c) Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting.

(d) It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.

(e) Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

(f) The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee shall be:

(a) Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;

(b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN (Internet Corporation for Assigned Names and Numbers);

(c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

(d) Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;

(e) Persons with an understanding of ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and the potential impact of ICANN (Internet Corporation for Assigned Names and Numbers)'s activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and

(f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN (Internet Corporation for Assigned Names and Numbers) bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN (Internet Corporation for Assigned Names and Numbers) body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (Internet Corporation for Assigned Names and Numbers) (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

Section 9.1. DESCRIPTION

(a) The Address Supporting Organization (Supporting Organization) ("**Address Supporting Organization (Supporting Organization)**" or "**ASO (Address Supporting Organization)**") shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

(b) The ASO (Address Supporting Organization) shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN (Internet Corporation for Assigned Names and Numbers) and the Number Resource Organization ("**NRO (Number Resource Organization)**"), an organization of the existing RIRs.

Section 9.2. ADDRESS COUNCIL

(a) The ASO (Address Supporting Organization) shall have an Address Council, consisting of the members of the NRO (Number Resource Organization) Number Council.

(b) The Address Council shall nominate individuals to fill Seats 9 and 10 on the Board. Notification of the Address Council's nominations shall be given by the Address Council in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 10.1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (Supporting Organization) ("**ccNSO (Country Code Names Supporting Organization)**"), which shall be responsible for:

(a) developing and recommending to the Board global policies relating to country-code top-level domains;

(b) Nurturing consensus across the ccNSO (Country Code Names Supporting Organization)'s community, including the name-related activities of ccTLDs;

(c) Coordinating with other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations), committees, and constituencies under ICANN (Internet Corporation for Assigned Names and Numbers);

(d) Nominating individuals to fill Seats 11 and 12 on the Board; and

(e) Other responsibilities of the ccNSO (Country Code Names Supporting Organization) as set forth in these Bylaws.

Policies that apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership are only those policies developed according to Section 10.4(j) and Section 10.4(k).

However, the ccNSO (Country Code Names Supporting Organization) may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD (Country Code Top Level Domain) managers, assisting in skills building within the global community of ccTLD (Country Code Top Level Domain) managers, and enhancing operational and technical cooperation among ccTLD (Country Code Top Level Domain) managers.

Section 10.2. ORGANIZATION

The ccNSO (Country Code Names Supporting Organization) shall consist of (a) ccTLD (Country Code Top Level Domain) managers that have agreed in writing to be members of the ccNSO (Country Code Names Supporting Organization) (see Section 10.4(b)) and (b) a ccNSO (Country Code Names Supporting Organization) Council responsible for managing the policy-development process of the ccNSO (Country Code Names Supporting Organization).

Section 10.3. ccNSO (Country Code Names Supporting Organization) COUNCIL

(a) The ccNSO (Country Code Names Supporting Organization) Council shall consist of three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each of ICANN (Internet Corporation for Assigned Names and Numbers)'s Geographic Regions in the manner described in Section 10.4(g) through Section 10.4(i); (ii) three ccNSO (Country Code Names Supporting Organization) Council members selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee; (iii) liaisons as described in Section 10.3(b); and (iv) observers as described in Section 10.3(c).

(b) There shall also be one liaison to the ccNSO (Country Code Names Supporting Organization) Council from each of the following organizations, to the extent they choose to appoint such a liaison: (i) the Governmental Advisory Committee (Advisory Committee); (ii) the At-Large Advisory Committee (Advisory Committee); and (iii) each of the Regional Organizations described in Section 10.5. These liaisons shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. Appointments of liaisons shall be made by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(c) The ccNSO (Country Code Names Supporting Organization) Council may agree with the Council of any other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) to exchange observers. Such observers shall not be members of or entitled to vote on the ccNSO (Country Code Names Supporting Organization) Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO (Country Code Names Supporting Organization) Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO (Country Code Names Supporting Organization) Council at any time by providing written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(d) (i) the regular term of each ccNSO (Country Code Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers)

annual meeting and shall end at the conclusion of the third ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter; (ii) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members within each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (iii) the regular terms of the three ccNSO (Country Code Names Supporting Organization) Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO (Country Code Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

(e) A ccNSO (Country Code Names Supporting Organization) Council member may resign at any time by giving written notice to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair.

(f) ccNSO (Country Code Names Supporting Organization) Council members may be removed for not attending three consecutive meetings of the ccNSO (Country Code Names Supporting Organization) Council without sufficient cause or for grossly inappropriate behavior, both as determined by at least a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council.

(g) A vacancy on the ccNSO (Country Code Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO (Country Code Names Supporting Organization) Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection, with a notification copy to the ccNSO (Country Code Names Supporting Organization) Council Chair. Vacancies in the positions of the ccNSO (Country Code Names Supporting Organization) Council members selected by ccNSO (Country Code Names Supporting Organization) members shall be filled for the unexpired term by the procedure described in Section 10.4(g) through (i).

(h) The role of the ccNSO (Country Code Names Supporting Organization) Council is to administer and coordinate the affairs of the ccNSO (Country Code Names Supporting Organization) (including coordinating meetings, including an annual meeting, of ccNSO (Country Code Names Supporting Organization) members as described in Section 10.4(f)) and to manage the development of policy recommendations in accordance with Section 10.6(a). The ccNSO (Country Code Names Supporting Organization) Council shall also undertake such other roles as the members of the ccNSO (Country Code Names Supporting Organization) shall decide from time to time.

(i) The ccNSO (Country Code Names Supporting Organization) Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. Notification of the ccNSO (Country Code Names Supporting Organization) Council's nominations shall be given by the ccNSO (Country Code Names Supporting Organization) Council Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(j) The ccNSO (Country Code Names Supporting Organization) Council shall select from among its members the ccNSO (Country Code Names Supporting Organization) Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO (Country Code Names Supporting Organization) Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting; any such selection must have affirmative votes of a majority of all the members of the ccNSO (Country Code Names Supporting Organization) Council then in office. The term of office of the ccNSO (Country Code

Names Supporting Organization) Council Chair and any Vice Chair(s) shall be as specified by the ccNSO (Country Code Names Supporting Organization) Council at or before the time the selection is made. The ccNSO (Country Code Names Supporting Organization) Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.

(k) The ccNSO (Country Code Names Supporting Organization) Council, subject to direction by the ccNSO (Country Code Names Supporting Organization) members, shall adopt such rules and procedures for the ccNSO (Country Code Names Supporting Organization) as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO (Country Code Names Supporting Organization) membership and operating procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council shall be published on the Website.

(l) Except as provided by Section 10.3(i) and Section 10.3(j), the ccNSO (Country Code Names Supporting Organization) Council shall act at meetings. The ccNSO (Country Code Names Supporting Organization) Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO (Country Code Names Supporting Organization) Council, meetings may be held in person or by other means, provided that all ccNSO (Country Code Names Supporting Organization) Council members are permitted to participate by at least one means described in Section 10.3(n). Except where determined by a majority vote of the members of the ccNSO (Country Code Names Supporting Organization) Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO (Country Code Names Supporting Organization) Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

(m) Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO (Country Code Names Supporting Organization) Council shall be provided to each ccNSO (Country Code Names Supporting Organization) Council member, liaison, and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by postal mail. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO (Country Code Names Supporting Organization) Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

(n) Members of the ccNSO (Country Code Names Supporting Organization) Council may participate in a meeting of the ccNSO (Country Code Names Supporting Organization) Council through personal attendance or use of electronic communication (such as telephone or video conference), provided that (i) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting can speak to and hear one another, (ii) all ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO (Country Code Names Supporting Organization) Council, and (iii)there is a reasonable means of verifying the identity of ccNSO (Country Code Names Supporting Organization) Council members participating in the meeting and their votes. A majority of the ccNSO (Country Code Names Supporting Organization) Council members (i.e. those entitled to vote) then in office shall constitute a quorum for the transaction of business, and actions by a majority vote of the ccNSO (Country Code Names Supporting Organization) Council members present at any meeting at which there is a quorum shall be actions of the ccNSO (Country Code Names Supporting Organization) Council, unless otherwise provided in these Bylaws. The ccNSO (Country Code Names Supporting Organization) Council shall transmit minutes of its meetings to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following the meeting, and no later than 21 days following the meeting.

Exhibit R-34

Section 10.4. MEMBERSHIP

(a) The ccNSO (Country Code Names Supporting Organization) shall have a membership consisting of ccTLD (Country Code Top Level Domain) managers. Any ccTLD (Country Code Top Level Domain) manager that meets the membership qualifications stated in Section 10.4(b) shall be entitled to be members of the ccNSO (Country Code Names Supporting Organization). For purposes of this Article 10, a ccTLD (Country Code Top Level Domain) manager is the organization or entity responsible for managing a ccTLD (Country Code Top Level Domain) according to and under the current heading "Delegation Record" in the Root Zone (Root Zone) Database, or under any later modification, for that country-code top-level domain.

For purposes of this Article, and Annexes B and C of these Bylaws, "Territory" is defined to be the country, dependency or other area of particular geopolitical interest listed on the 'International Standard ISO (International Organization for Standardization) 3166-1, Codes for the representation of names of countries and their subdivisions – Part 1: Country Codes', or, in some exceptional cases listed on the reserved ISO (International Organization for Standardization) 3166-1 code elements.

(b) Any ccTLD (Country Code Top Level Domain) manager may become a ccNSO (Country Code Names Supporting Organization) member by submitting an application to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive applications. The application shall be in writing in a form designated by the ccNSO (Country Code Names Supporting Organization) Council. The application shall include the ccTLD (Country Code Top Level Domain) manager's recognition of the role of the ccNSO (Country Code Names Supporting Organization) within the ICANN (Internet Corporation for Assigned Names and Numbers) structure as well as the ccTLD (Country Code Top Level Domain) manager's agreement, for the duration of its membership in the ccNSO (Country Code Names Supporting Organization), (i) to adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (ii) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 10.7(c). A ccNSO (Country Code Names Supporting Organization) member may resign from membership at any time by giving written notice to a person designated by the ccNSO (Country Code Names Supporting Organization) Council to receive notices of resignation. Upon resignation the ccTLD (Country Code Top Level Domain) manager ceases to agree to (A)adhere to rules of the ccNSO (Country Code Names Supporting Organization), including membership rules, (B) to abide by policies developed and recommended by the ccNSO (Country Code Names Supporting Organization) and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO (Country Code Names Supporting Organization) membership fees established by the ccNSO (Country Code Names Supporting Organization) Council under Section 10.7(c). In the absence of designation by the ccNSO (Country Code Names Supporting Organization) Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary, who shall notify the ccNSO (Country Code Names Supporting Organization) Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO (Country Code Names Supporting Organization) nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA (Internet Assigned Numbers Authority) database. Any individual relationship a ccTLD (Country Code Top Level Domain) manager has with ICANN (Internet Corporation for Assigned Names and Numbers) or the ccTLD (Country Code Top Level Domain) manager's receipt of IANA (Internet Assigned Numbers Authority) services is not in any way contingent upon membership in the ccNSO (Country Code Names Supporting Organization).

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO (Country Code

Names Supporting Organization) are referred to as ccNSO (Country Code Names Supporting Organization) members "within" the Geographic Region, regardless of the physical location of the ccTLD (Country Code Top Level Domain) manager. In cases where the Geographic Region of a ccNSO (Country Code Names Supporting Organization) member is unclear, the ccTLD (Country Code Top Level Domain) member should self-select according to procedures adopted by the ccNSO (Country Code Names Supporting Organization) Council.

(e) Designation of Representative

(i) Each ccTLD (Country Code Top Level Domain) manager may designate in writing a person, organization, or entity to represent the ccTLD (Country Code Top Level Domain) manager in matters relating to the ccNSO (Country Code Names Supporting Organization) ("Representative"). In the absence of such a designation, the person, organization, or entity listed as the administrative contact in the IANA (Internet Assigned Numbers Authority) database shall be deemed to be the designate of the ccTLD (Country Code Top Level Domain) manager by whom the ccNSO (Country Code Names Supporting Organization) member shall be represented.

(ii) For any Territory for which there is a single ccTLD (Country Code Top Level Domain) manager that is a ccNSO (Country Code Names Supporting Organization) member, the Representative selected by that manager in accordance with Section 10.4(e) shall be the Territory's emissary ("Emissary") for the purpose of voting in the specific cases enumerated in this Article, Annex B, or Annex C of these Bylaws. In the event two or more ccTLD (Country Code Top Level Domain) managers from the same Territory are ccNSO (Country Code Names Supporting Organization) members, those ccTLD (Country Code Top Level Domain) managers are to appoint one of the Representatives from among those ccNSO (Country Code Names Supporting Organization) members to serve as the Emissary to vote on behalf of the ccNSO (Country Code Names Supporting Organization) members from that Territory.

(iii) During any period in which an Emissary is not appointed, the ccTLD (Country Code Top Level Domain) manager that has been the member of the ccNSO (Country Code Names Supporting Organization) for the longest period is deemed to be the Emissary for that Territory.

(iv) Each Emissary, regardless of the number of ccTLD (Country Code Top Level Domain) managers within the relevant Territory, is entitled to cast a single vote in any round of any voting process defined within this Article, Annex B or Annex C that is reserved for Emissary voting. The ccTLD (Country Code Top Level Domain) managers within each Territory may define the process to determine how their respective Emissary's vote is determined.

(f) There shall be an annual meeting of ccNSO (Country Code Names Supporting Organization) members, which shall be coordinated by the ccNSO (Country Code Names Supporting Organization) Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD (Country Code Top Level Domain) managers that are not members of the ccNSO (Country Code Names Supporting Organization) as well as other non-members of the ccNSO (Country Code Names Supporting Organization) to address the meeting. To the extent practicable, annual meetings of the ccNSO (Country Code Names Supporting Organization) members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN (Internet Corporation for Assigned Names and Numbers)'s other Supporting Organizations (Supporting Organizations).

(g) The ccNSO (Country Code Names Supporting Organization) Council members selected by the ccNSO (Country Code Names Supporting Organization) members from each Geographic Region (see Section 10.3(a)(i)) shall be selected through nomination, and if necessary election, by the ccNSO (Country Code Names Supporting Organization) members within that Geographic Region. At least 90

days before the end of the regular term of any ccNSO (Country Code Names Supporting Organization)-member-selected member of the ccNSO (Country Code Names Supporting Organization) Council, or upon the occurrence of a vacancy in the seat of such a ccNSO (Country Code Names Supporting Organization) Council member, the ccNSO (Country Code Names Supporting Organization) Council shall establish a nomination and election schedule, which shall be sent to all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region and posted on the Website.

(h) Any ccNSO (Country Code Names Supporting Organization) member may nominate an individual to serve as a ccNSO (Country Code Names Supporting Organization) Council member representing the ccNSO (Country Code Names Supporting Organization) member's Geographic Region. Nominations must be seconded by another ccNSO (Country Code Names Supporting Organization) member from a different Territory, from the same Geographic Region. By accepting their nomination, individuals nominated to the ccNSO (Country Code Names Supporting Organization) Council agree to support the policies committed to by ccNSO (Country Code Names Supporting Organization) members.

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO (Country Code Names Supporting Organization) Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO (Country Code Names Supporting Organization) Council. Otherwise, an election by written ballot (which may be by electronic means) shall be held to select the ccNSO (Country Code Names Supporting Organization) Council members from among those nominated (with seconds and acceptances), with ccNSO (Country Code Names Supporting Organization) members from the Geographic Region being entitled to vote in the election through their Emissaries. In such an election, a majority of the Emissaries entitled to vote in the Geographic Region shall constitute a quorum, and the selected candidate must receive a plurality of the votes cast by the Emissaries within the Geographic Region. The ccNSO (Country Code Names Supporting Organization) Council Chair shall provide the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary prompt written notice of the selection of ccNSO (Country Code Names Supporting Organization) Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN (Internet Corporation for Assigned Names and Numbers) policies shall apply to ccNSO (Country Code Names Supporting Organization) members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO (Country Code Names Supporting Organization) according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO (Country Code Names Supporting Organization) to the Board, and (iv) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD (Country Code Top Level Domain) manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN (Internet Corporation for Assigned Names and Numbers) in its activities concerning ccTLDs.

(k) A ccNSO (Country Code Names Supporting Organization) member shall not be bound if it provides a declaration to the ccNSO (Country Code Names Supporting Organization) Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS (Domain Name System) operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO (Country Code Names Supporting Organization) Council will provide a response to the ccNSO (Country Code Names Supporting Organization) member's declaration. If there is a ccNSO (Country Code Names Supporting Organization) Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO (Country Code Names Supporting Organization) Council's agreement with the declaration. If the ccNSO (Country Code Names

Supporting Organization) Council disagrees, the ccNSO (Country Code Names Supporting Organization) Council shall review the situation after a six-month period. At the end of that period, the ccNSO (Country Code Names Supporting Organization) Council shall make findings as to (A) whether the ccNSO (Country Code Names Supporting Organization) members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS (Domain Name System) operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO (Country Code Names Supporting Organization) Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO (Country Code Names Supporting Organization) Council.

Section 10.5. REGIONAL ORGANIZATIONS

The ccNSO (Country Code Names Supporting Organization) Council may designate a Regional Organization for each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, provided that the Regional Organization is open to full membership by all ccNSO (Country Code Names Supporting Organization) members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO (Country Code Names Supporting Organization) Council and shall be subject to review according to procedures established by the Board.

Section 10.6. ccNSO (Country Code Names Supporting Organization) POLICY-DEVELOPMENT PROCESS AND SCOPE

(a) The scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role shall be as stated in Annex C to these Bylaws; any modifications to the scope shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

(b) In developing global policies within the scope of the ccNSO (Country Code Names Supporting Organization) and recommending them to the Board, the ccNSO (Country Code Names Supporting Organization) shall follow the ccNSO (Country Code Names Supporting Organization) Policy-Development Process ("**ccPDP**"). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO (Country Code Names Supporting Organization) by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 10.7. STAFF SUPPORT AND FUNDING

(a) Upon request of the ccNSO (Country Code Names Supporting Organization) Council, a member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff may be assigned to support the ccNSO (Country Code Names Supporting Organization) and shall be designated as the ccNSO (Country Code Names Supporting Organization) Staff Manager. Alternatively, the ccNSO (Country Code Names Supporting Organization) Council may designate, at ccNSO (Country Code Names Supporting Organization) expense, another person to serve as ccNSO (Country Code Names Supporting Organization) Staff Manager. The work of the ccNSO (Country Code Names Supporting Organization) Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO (Country Code Names Supporting Organization) Council, and may include the duties of ccPDP Issue Manager.

(b) Upon request of the ccNSO (Country Code Names Supporting Organization) Council, ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the ccNSO (Country Code Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by ccNSO (Country Code Names Supporting Organization) participants for travel to any meeting of the ccNSO (Country Code Names

Supporting Organization) or for any other purpose. The ccNSO (Country Code Names Supporting Organization) Council may make provision, at ccNSO (Country Code Names Supporting Organization) expense, for administrative and operational support in addition or as an alternative to support provided by ICANN (Internet Corporation for Assigned Names and Numbers).

(c) The ccNSO (Country Code Names Supporting Organization) Council shall establish fees to be paid by ccNSO (Country Code Names Supporting Organization) members to defray ccNSO (Country Code Names Supporting Organization) expenses as described in Section 10.7(a) and Section 10.7(b), as approved by the ccNSO (Country Code Names Supporting Organization) members.

(d) Written notices given to the Secretary under this Article 10 shall be permanently retained, and shall be made available for review by the ccNSO (Country Code Names Supporting Organization) Council on request. The Secretary shall also maintain the roll of members of the ccNSO (Country Code Names Supporting Organization), which shall include the name of each ccTLD (Country Code Top Level Domain) manager's designated representative, and which shall be posted on the Website.

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

Section 11.1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (Supporting Organization) (the "**Generic Names Supporting Organization (Supporting Organization)**" or "**GNSO (Generic Names Supporting Organization)**", and collectively with the ASO (Address Supporting Organization) and ccNSO (Country Code Names Supporting Organization), the "**Supporting Organizations (Supporting Organizations)**")), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO (Generic Names Supporting Organization) as set forth in these Bylaws.

Section 11.2. ORGANIZATION

The GNSO (Generic Names Supporting Organization) shall consist of:

(a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;

(b) Four Stakeholder Groups organized within Houses as described in Section 11.5;

(c) Two Houses within the GNSO (Generic Names Supporting Organization) Council as described in Section 11.3(h);

(d) A GNSO (Generic Names Supporting Organization) Council responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization), as described in Section 11.3; and

(e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

Section 11.3. GNSO (Generic Names Supporting Organization) COUNCIL

(a) Subject to Section 11.5, the GNSO (Generic Names Supporting Organization) Council shall consist of:

> (i) three representatives selected from the Registries Stakeholder Group;

(ii) three representatives selected from the Registrars Stakeholder Group;

(iii) six representatives selected from the Commercial Stakeholder Group;

(iv) six representatives selected from the Non-Commercial Stakeholder Group; and

(v) three representatives selected by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO (Generic Names Supporting Organization) Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO (Generic Names Supporting Organization) Council at the same time.

Stakeholder Groups should, in their charters, ensure their representation on the GNSO (Generic Names Supporting Organization) Council is as diverse as possible and practicable, including considerations of geography, GNSO (Generic Names Supporting Organization) Constituency, sector, ability and gender.

There may also be liaisons to the GNSO (Generic Names Supporting Organization) Council from other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and/or Advisory Committees (Advisory Committees), from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO (Generic Names Supporting Organization) Council by providing written notice to the Chair of the GNSO (Generic Names Supporting Organization) Council and to the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO (Generic Names Supporting Organization) Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO (Generic Names Supporting Organization) Council.

(b) The regular term of each GNSO (Generic Names Supporting Organization) Council member shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO (Generic Names Supporting Organization) Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance," such as, but not limited to, meeting geographic or other diversity requirements defined in the Stakeholder Group charters, where no alternative representative is available to serve, no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms must remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

(c) A vacancy on the GNSO (Generic Names Supporting Organization) Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO (Generic Names Supporting Organization) Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO (Generic Names Supporting Organization) Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO (Generic Names Supporting Organization) Council member selected by the Nominating Committee may be removed for cause: (i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or (ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 11.3(h)). Such removal shall be subject to reversal by the ICANN (Internet Corporation for Assigned Names and Numbers) Board on appeal by the affected GNSO (Generic Names Supporting Organization) Council member.

(d) The GNSO (Generic Names Supporting Organization) Council is responsible for managing the policy development process of the GNSO (Generic Names Supporting Organization). It shall adopt such procedures (the "**GNSO (Generic Names Supporting Organization) Operating Procedures**") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO (Generic Names Supporting Organization) Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO (Generic Names Supporting Organization) Council, the applicable procedures shall be as set forth in Section 11.6.

(e) No more than one officer, director or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO (Generic Names Supporting Organization) Council at any given time.

(f) The GNSO (Generic Names Supporting Organization) shall nominate by written ballot or by action at a meeting individuals to fill Seats 13 and 14 on the Board. Each of the two voting Houses of the GNSO (Generic Names Supporting Organization), as described in Section 11.3(h), shall make a nomination to fill one of two Board seats, as outlined below; any such nomination must have affirmative votes compromising sixty percent (60%) of all the respective voting House members:

> (i) the Contracted Parties House (as described in Section 11.3(h)(i)) shall select a representative to fill Seat 13; and
>
> (ii) the Non-Contracted Parties House (as described in Section 11.3(h)(ii)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO (Generic Names Supporting Organization) Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO (Generic Names Supporting Organization) Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(g) The GNSO (Generic Names Supporting Organization) Council shall select the GNSO (Generic Names Supporting Organization) Chair for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO (Generic Names Supporting Organization) Council, for a term the GNSO (Generic Names Supporting Organization) Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained

in the GNSO (Generic Names Supporting Organization) Operating Procedures. In the event that the GNSO (Generic Names Supporting Organization) Council has not elected a GNSO (Generic Names Supporting Organization) Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO (Generic Names Supporting Organization) Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the GNSO (Generic Names Supporting Organization) Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

> (i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee for a total of seven voting members; and
>
> (ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee to that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO (Generic Names Supporting Organization) Council.

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO (Generic Names Supporting Organization) Operating Procedures, the default threshold to pass a GNSO (Generic Names Supporting Organization) Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO (Generic Names Supporting Organization) actions:

> (i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
>
> (ii) Initiate a Policy Development Process ("**PDP (Policy Development Process)**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
>
> (iii) Initiate a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of GNSO (Generic Names Supporting Organization) Supermajority (as defined in Section 11.3(i)(xix)).
>
> (iv) Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
>
> (v) Approve a PDP (Policy Development Process) Team Charter for a PDP (Policy Development Process) Not Within Scope: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.
>
> (vi) Changes to an Approved PDP (Policy Development Process) Team Charter: For any PDP (Policy Development Process) Team Charter approved under (iv) or (v) above, the GNSO (Generic Names Supporting Organization) Council may approve an amendment to the Charter through a simple majority vote of each House.

(vii) Terminate a PDP (Policy Development Process): Once initiated, and prior to the publication of a Final Report, the GNSO (Generic Names Supporting Organization) Council may terminate a PDP (Policy Development Process) only for significant cause, upon a motion that passes with a GNSO (Generic Names Supporting Organization) Supermajority Vote in favor of termination.

(viii) Approve a PDP (Policy Development Process) Recommendation Without a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO (Generic Names Supporting Organization) Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.

(ix) Approve a PDP (Policy Development Process) Recommendation With a GNSO (Generic Names Supporting Organization) Supermajority: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority,

(x) Approve a PDP (Policy Development Process) Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

(xi) Modification of Approved PDP (Policy Development Process) Recommendation: Prior to Final Approval by the Board, an Approved PDP (Policy Development Process) Recommendation may be modified or amended by the GNSO (Generic Names Supporting Organization) Council with a GNSO (Generic Names Supporting Organization) Supermajority vote.

(xii) Initiation of an Expedited Policy Development Process ("**EPDP**"): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xiii) Approve an EPDP Team Charter: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN (Internet Corporation for Assigned Names and Numbers) contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO (Generic Names Supporting Organization) Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO (Generic Names Supporting Organization) Guidance Process ("**GGP**"): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(xix) A "**GNSO (Generic Names Supporting Organization) Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

(j) The voting thresholds described below shall apply to the following GNSO (Generic Names Supporting Organization) actions as a Decisional Participant in the Empowered Community. For any action not listed, the default threshold for the GNSO (Generic Names Supporting Organization) to act as a Decisional Participant in the Empowered community requires a simple majority vote of each House:

(i) Amendment of PTI Articles of Incorporation as contemplated in Section 16.2: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(ii) GNSO (Generic Names Supporting Organization) Council Inspection Request as contemplated in Section 22.7: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iii) GNSO (Generic Names Supporting Organization) Council Inspection Remedy, as contemplated in Section 22.7 - e, and Stakeholder Group / Constituency Inspection Remedy, as contemplated in Section 22.7 – e(ii) and e(iii), for an inspection requested by the GNSO (Generic Names Supporting Organization) as a Decisional Participant in the Empowered Community: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iv) Amendments to Fundamental Bylaws and Article Amendments as contemplated by Section 25.2 of the Bylaws, Asset Sales, as contemplated by Article 26 of the Bylaws, amendments to ICANN (Internet Corporation for Assigned Names and Numbers) Articles of Incorporation: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(v) Approval of a Nominating Committee Director Removal Petition as contemplated in Annex D, Article 3, Section 3.1(b) and support for a petition submitted by a Petitioning Decisional Participant as contemplated in Section 3.2(d): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(vi) Approval of a Nominating Committee Director Removal Supported Petition as contemplated in Annex D, Article 3, Section 3.1(f): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(vii) Approval of a petition to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(a): requires an affirmative vote of at least three-fourths (3/4) of the House that appointed that Director.

(viii) Approval of a petition notice to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(f): requires an affirmative vote of at least three-fourths (3/4) of the GNSO (Generic Names Supporting Organization) Council and at least three-fourths (3/4) of the House that appointed that Director.

(ix) Approval of a Board Recall Petition as contemplated in Annex D, Article 3, Section 3.3(b) and support for another Petitioning Decisional Participant: requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

(x) Approval of a Board Recall Supported Petition as contemplated in Annex D, Article 3, Section 3.3(e): requires an affirmative vote of a GNSO (Generic Names Supporting Organization) Supermajority.

Section 11.4. STAFF SUPPORT AND FUNDING

(a) A member of the ICANN (Internet Corporation for Assigned Names and Numbers) staff shall be assigned to support the GNSO (Generic Names Supporting Organization), whose work on substantive

matters shall be assigned by the Chair of the GNSO (Generic Names Supporting Organization) Council, and shall be designated as the GNSO (Generic Names Supporting Organization) Staff Manager ("**Staff Manager**").

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the GNSO (Generic Names Supporting Organization) to carry out its responsibilities. Such support shall not include an obligation for ICANN (Internet Corporation for Assigned Names and Numbers) to fund travel expenses incurred by GNSO (Generic Names Supporting Organization) participants for travel to any meeting of the GNSO (Generic Names Supporting Organization) or for any other purpose. ICANN (Internet Corporation for Assigned Names and Numbers) may, at its discretion, fund travel expenses for GNSO (Generic Names Supporting Organization) participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 11.5. STAKEHOLDER GROUPS

(a) The following "**Stakeholder Groups**" are hereby recognized as representative of a specific group of one or more "**Constituencies**" or interest groups:

> (i) Registries Stakeholder Group representing all gTLD (generic Top Level Domain) registries under contract to ICANN (Internet Corporation for Assigned Names and Numbers);
>
> (ii) Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN (Internet Corporation for Assigned Names and Numbers);
>
> (iii) Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet ("**Commercial Stakeholder Group**"), which includes the Business Constituency ("**Business Constituency**"), Intellectual Property Constituency ("**Intellectual Property Constituency**") and the Internet Service Providers and Connectivity Providers Constituency ("**Internet Service Providers and Connectivity Providers Constituency**"); and
>
> (iv) Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

(b) Each Stakeholder Group is assigned a specific number of GNSO (Generic Names Supporting Organization) Council seats in accordance with Section 11.3(a).

(c) Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

(d) Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain:

> (i) A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO (Generic Names Supporting Organization) to carry out its policy-development responsibilities;
>
> (ii) A detailed explanation of why the proposed new Constituency adequately represents, on a global basis, the stakeholders it seeks to represent;

(iii) A recommendation for organizational placement within a particular Stakeholder Group; and

(iv) A proposed charter that adheres to the principles and procedures contained in these Bylaws.

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment.

(e) The Board may create new Constituencies as described in Section 11.5(c) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN (Internet Corporation for Assigned Names and Numbers). In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO (Generic Names Supporting Organization) Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 11.6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO (Generic Names Supporting Organization) shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 11.3(d).

ARTICLE 12 ADVISORY COMMITTEES

Section 12.1. GENERAL

The Board may create one or more "**Advisory Committees (Advisory Committees)**" in addition to those set forth in this Article 12. Advisory Committee (Advisory Committee) membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees (Advisory Committees) shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees (Advisory Committees):

(a) Governmental Advisory Committee (Advisory Committee)

(i) The Governmental Advisory Committee (Advisory Committee) should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues.

(ii) Membership in the Governmental Advisory Committee (Advisory Committee) shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee (Advisory Committee) through its Chair.

(iii) The Governmental Advisory Committee (Advisory Committee) may adopt its own charter and internal operating principles or procedures to guide its operations, to be published on the Website.

(iv) The chair of the Governmental Advisory Committee (Advisory Committee) shall be elected by the members of the Governmental Advisory Committee (Advisory Committee) pursuant to procedures adopted by such members.

(v) Each member of the Governmental Advisory Committee (Advisory Committee) shall appoint one accredited representative to the Governmental Advisory Committee (Advisory Committee). The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization and whose primary function with such government, public authority, or organization is to develop or influence governmental or public policies.

(vi) The Governmental Advisory Committee (Advisory Committee) shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

(vii) The Governmental Advisory Committee (Advisory Committee) may designate a non-voting liaison to each of the Supporting Organization (Supporting Organization) Councils and Advisory Committees (Advisory Committees), to the extent the Governmental Advisory Committee (Advisory Committee) deems it appropriate and useful to do so.

(viii) The Board shall notify the Chair of the Governmental Advisory Committee (Advisory Committee) in a timely manner of any proposal raising public policy issues on which it or any of the Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

(ix) The Governmental Advisory Committee (Advisory Committee) may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

(x) The advice of the Governmental Advisory Committee (Advisory Committee) on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee (Advisory Committee) advice, it shall so inform the Governmental Advisory Committee (Advisory Committee) and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee (Advisory Committee) advice approved by a full Governmental Advisory Committee (Advisory Committee) consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC (Governmental Advisory Committee) Consensus (Consensus) Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee (Advisory Committee) and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee (Advisory Committee) will state whether any advice it gives to the Board is GAC (Governmental Advisory Committee) Consensus (Consensus) Advice.

(xi) If GAC (Governmental Advisory Committee) Consensus (Consensus) Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee (Advisory Committee) advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee (Advisory Committee) members with regard to public policy issues falling within their responsibilities.

(b) Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)

(i) The role of the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) ("**Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee)**" or "**SSAC (Security and Stability Advisory Committee)**") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

(A) To communicate on security matters with the Internet technical community and the operators and managers of critical DNS (Domain Name System) infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The SSAC (Security and Stability Advisory Committee) shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS (Domain Name System) and address allocation and those engaged in operations planning.

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community accordingly. The SSAC (Security and Stability Advisory Committee) shall recommend any necessary audit activity to assess the current status of DNS (Domain Name System) and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC (Security and Stability Advisory Committee) shall monitor these activities and inform the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

(ii) The SSAC (Security and Stability Advisory Committee)'s chair and members shall be appointed by the Board. SSAC (Security and Stability Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms members may serve. The SSAC (Security and Stability Advisory Committee) chair may provide recommendations to the Board regarding appointments to the SSAC (Security and Stability Advisory Committee). The SSAC (Security and Stability Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC (Security and Stability Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have the power to remove SSAC (Security and Stability Advisory Committee) appointees as recommended by or in consultation with the SSAC (Security and Stability Advisory Committee).

(iii) The SSAC (Security and Stability Advisory Committee) shall annually appoint a Liaison to the Board according to Section 7.9.

(c) Root Server System Advisory Committee (Advisory Committee)

(i) The role of the Root Server System Advisory Committee (Advisory Committee) ("**Root Server System Advisory Committee (Advisory Committee)**" or "**RSSAC (Root Server System Advisory Committee)**") is to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

(A) Communicate on matters relating to the operation of the Root Servers (Root Servers) and their multiple instances with the Internet technical community and the ICANN (Internet Corporation for Assigned Names and Numbers) community. The RSSAC (Root Server System Advisory Committee) shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS (Domain Name System) servers.

(B) Communicate on matters relating to the administration of the Root Zone (Root Zone) with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone (Root Zone) File.

(C) Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board.

(ii) The RSSAC (Root Server System Advisory Committee) shall be led by a chair. The RSSAC (Root Server System Advisory Committee) chair and members shall be appointed by the Board.

(A) RSSAC (Root Server System Advisory Committee) membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC (Root Server System Advisory Committee) chair shall provide recommendations to the Board regarding appointments to the RSSAC (Root Server System Advisory Committee). If the Board declines to appoint a person nominated by the RSSAC (Root Server System Advisory Committee), then it will provide the rationale for its decision. The RSSAC (Root Server System Advisory Committee) chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC (Root Server System Advisory Committee) is considered for appointment or re-appointment each year. The Board shall also have the power to remove RSSAC (Root Server System Advisory Committee) appointees as recommended by or in consultation with the RSSAC (Root Server System Advisory Committee).

(B) The RSSAC (Root Server System Advisory Committee) shall recommend the appointment of the chair to the Board following a nomination process that it devises and documents.

(iii) The RSSAC (Root Server System Advisory Committee) shall annually appoint a Liaison to the Board according to Section 7.9jm.

(d) At-Large Advisory Committee (Advisory Committee)

(i) The At-Large Advisory Committee (Advisory Committee) ("**At-Large Advisory Committee (Advisory Committee)**" or "**ALAC (At-Large Advisory Committee)**") is the primary organizational home within ICANN (Internet Corporation for Assigned Names and Numbers) for individual Internet users. The role of the ALAC (At-Large Advisory Committee) shall be to consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers), insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations), as well as the many other issues for which community input and advice is appropriate. The ALAC (At-Large Advisory Committee), which plays an important role in ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms, also coordinates some of ICANN (Internet Corporation for Assigned Names and Numbers)'s outreach to individual Internet users.

(ii) The ALAC (At-Large Advisory Committee) shall consist of (A) two members selected by each of the Regional At-Large Organizations ("**RALOs**") established according to Section 12.2(d)(vii), and (B) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 7.5.

(iii) The regular terms of members of the ALAC (At-Large Advisory Committee) shall be as follows:

(A) The term of one member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an even-numbered year.

(B) The term of the other member selected by each RALO shall begin at the conclusion of an ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in an odd-numbered year.

(C) The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year.

(D) The regular term of each member shall end at the conclusion of the second ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting after the term began.

(iv) The Chair of the ALAC (At-Large Advisory Committee) shall be elected by the members of the ALAC (At-Large Advisory Committee) pursuant to procedures adopted by the ALAC (At-Large Advisory Committee).

(v) The ALAC (At-Large Advisory Committee) shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region) to the Nominating Committee.

(vi) The At-Large Advisory Committee (Advisory Committee) may designate non-voting liaisons to each of the ccNSO (Country Code Names Supporting Organization) Council and the GNSO (Generic Names Supporting Organization) Council.

(vii) There shall be one RALO for each Geographic Region established according to Section 7.5. Each RALO shall serve as the main forum and coordination point for public input to ICANN

(Internet Corporation for Assigned Names and Numbers) in its Geographic Region and shall be a non-profit organization certified by ICANN (Internet Corporation for Assigned Names and Numbers) according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee (Advisory Committee). An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) addressing the respective roles and responsibilities of ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO regarding the process for selecting ALAC (At-Large Advisory Committee) members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures ("**At-Large Structures**").

(viii) Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers) according to Section 12.2(d)(ix). If so provided by its Memorandum of Understanding with ICANN (Internet Corporation for Assigned Names and Numbers), a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

(ix) Membership in the At-Large Community

(A) The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC (At-Large Advisory Committee) and shall be stated in the Memorandum of Understanding between ICANN (Internet Corporation for Assigned Names and Numbers) and the RALO for each Geographic Region.

(B) The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

(C) Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.

(D) To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.

(E) Once the criteria and standards have been established as provided in this Section 12.2(d)(ix), the ALAC (At-Large Advisory Committee), with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC (At-Large Advisory Committee) in its rules of procedure, save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.

(G) Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.

(H) On an ongoing basis, the ALAC (At-Large Advisory Committee) may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

(x) The ALAC (At-Large Advisory Committee) is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

(A) Nominating individuals to fill Seat 15 on the Board. Notification of the At-Large Community's nomination shall be given by the ALAC (At-Large Advisory Committee) Chair in writing to the EC (Empowered Community) Administration, with a copy to the Secretary, and the EC (Empowered Community) shall promptly act on it as provided in Section 7.25.

(B) Keeping the community of individual Internet users informed about the significant news from ICANN (Internet Corporation for Assigned Names and Numbers);

(C) Distributing (through posting or otherwise) an updated agenda, news about ICANN (Internet Corporation for Assigned Names and Numbers), and information about items in the ICANN (Internet Corporation for Assigned Names and Numbers) policy-development process;

(D) Promoting outreach activities in the community of individual Internet users;

(E) Developing and maintaining on-going information and education programs, regarding ICANN (Internet Corporation for Assigned Names and Numbers) and its work;

(F) Establishing an outreach strategy about ICANN (Internet Corporation for Assigned Names and Numbers) issues in each RALO's Geographic Region;

(G) Participating in the ICANN (Internet Corporation for Assigned Names and Numbers) policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

(H) Making public, and analyzing, ICANN (Internet Corporation for Assigned Names and Numbers)'s proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

(I) Offering Internet-based mechanisms that enable discussions among members of At-Large Structures; and

(xi) Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN (Internet Corporation for Assigned Names and Numbers) decision-making, so interested individuals can share their views on pending ICANN (Internet Corporation for Assigned Names and Numbers) issues.

Section 12.3. PROCEDURES

Each Advisory Committee (Advisory Committee) shall determine its own rules of procedure and quorum requirements; provided that each Advisory Committee (Advisory Committee) shall ensure that the advice provided to the Board by such Advisory Committee (Advisory Committee) is communicated in a clear and unambiguous written statement, including the rationale for such advice. The Board will respond in a timely manner to formal advice from all Advisory Committees (Advisory Committees) explaining what action it took and the rationale for doing so.

Section 12.4. TERM OF OFFICE

The chair and each member of an Advisory Committee (Advisory Committee) shall serve until his or her successor is appointed, or until such Advisory Committee (Advisory Committee) is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the Advisory Committee (Advisory Committee).

Section 12.5. VACANCIES

Vacancies on any Advisory Committee (Advisory Committee) shall be filled in the same manner as provided in the case of original appointments.

Section 12.6. COMPENSATION

Advisory Committee (Advisory Committee) members shall receive no compensation for their services as a member of such Advisory Committee (Advisory Committee). The Board may, however, authorize the reimbursement of actual and necessary expenses incurred by Advisory Committee (Advisory Committee) members, including Directors, performing their duties as Advisory Committee (Advisory Committee) members.

ARTICLE 13 OTHER ADVISORY MECHANISMS

Section 13.1. EXTERNAL EXPERT ADVICE

(a) Purpose. The purpose of seeking external expert advice is to allow the policy-development process within ICANN (Internet Corporation for Assigned Names and Numbers) to take advantage of existing expertise that resides in the public or private sector but outside of ICANN (Internet Corporation for Assigned Names and Numbers). In those cases where there are relevant public bodies with expertise, or where access to private expertise could be helpful, the Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals.

(b) Types of Expert Advisory Panels

> (i) On its own initiative or at the suggestion of any ICANN (Internet Corporation for Assigned Names and Numbers) body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 13.1(c) shall apply.
>
> (ii) In addition, in accordance with Section 13.1(c), the Board may refer issues of public policy pertinent to matters within ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission to a multinational governmental or treaty organization.

(c) Process for Seeking Advice: Public Policy Matters

> (i) The Governmental Advisory Committee (Advisory Committee) may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source, as set out above.
>
> (ii) In the event that the Board determines, upon such a recommendation or otherwise, that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee (Advisory Committee) regarding the appropriate source from which to seek the advice and the arrangements, including definition of scope and process, for requesting and obtaining that advice.
>
> (iii) The Board shall, as appropriate, transmit any request for advice from a multinational governmental or treaty organization, including specific terms of reference, to the Governmental Advisory Committee (Advisory Committee), with the suggestion that the request be transmitted by the Governmental Advisory Committee (Advisory Committee) to the multinational governmental or treaty organization.

(d) Process for Seeking and Advice: Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 13.1(b)(i) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

(e) Receipt of Expert Advice and its Effect. External advice pursuant to this Section 13.1 shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body in carrying out its responsibilities.

(f) Opportunity to Comment. The Governmental Advisory Committee (Advisory Committee), in addition to the Supporting Organizations (Supporting Organizations) and other Advisory Committees (Advisory Committees), shall have an opportunity to comment upon any external advice received prior to any decision by the Board.

Section 13.2. TECHNICAL LIAISON GROUP

(a) Purpose. The quality of ICANN (Internet Corporation for Assigned Names and Numbers)'s work depends on access to complete and authoritative information concerning the technical standards that underlie ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. ICANN (Internet Corporation for Assigned Names and Numbers)'s relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group ("**TLG**") shall connect the Board with appropriate sources of technical advice on specific matters pertinent to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities.

(b) TLG Organizations. The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI (European Telecommunications Standards Institute)), the International Telecommunications Union's Telecommunication Standardization Sector (ITU (International Telecommunication Union)-T), the World Wide Web Consortium (W3C (World Wide Web Consortium)), and the Internet Architecture Board ("**IAB (Internet Architecture Board)**").

(c) Role. The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other ICANN (Internet Corporation for Assigned Names and Numbers) entities. This role has both a responsive component and an active "watchdog" component, which involve the following responsibilities:

> (i) In response to a request for information, to connect the Board or other ICANN (Internet Corporation for Assigned Names and Numbers) body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.
>
> (ii) As an ongoing "watchdog" activity, to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope that could affect Board decisions or other ICANN (Internet Corporation for Assigned Names and Numbers) actions, and to draw attention to global technical standards issues that affect policy development within the scope of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission. This component of the TLG role covers circumstances in which ICANN (Internet Corporation for Assigned Names and Numbers) is unaware of a new development, and would therefore otherwise not realize that a question should be asked.

(d) TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

(e) Technical Work with the IETF (Internet Engineering Task Force). The TLG shall have no involvement with ICANN (Internet Corporation for Assigned Names and Numbers)'s work for the Internet Engineering Task Force (IETF (Internet Engineering Task Force)), Internet Research Task Force, or the Internet Architecture Board (IAB (Internet Architecture Board)), as described in the IETF (Internet Engineering Task Force)-ICANN (Internet Corporation for Assigned Names and Numbers) Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000 and any supplemental agreements thereto.

(f) Individual Technical Experts. Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to ICANN (Internet Corporation for Assigned Names and Numbers)'s activities. These 8 experts shall be available as necessary to determine, through an exchange of e-mail messages, where to direct a technical question from ICANN (Internet Corporation for Assigned Names and Numbers) when ICANN (Internet Corporation for Assigned Names and Numbers) does not ask a specific TLG organization directly.

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

Section 14.1. BOARD COMMITTEES

The Board may establish one or more committees of the Board (each, a "**Board Committee**"), which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; provided, that a Liaison may be appointed as a liaison to a Committee of the Board consistent with their non-voting capacity. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all Directors; provided, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all Directors.

Section 14.2. POWERS OF BOARD COMMITTEES

(a) The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

> (i) The filling of vacancies on the Board or on any committee;
>
> (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
>
> (iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
>
> (iv) The appointment of committees of the Board or the members thereof;
>
> (v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CCC;

> (vi) The approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget required by Section 22.4 or the Operating Plan or Strategic Plan required by Section 22.5; or
>
> (vii) The compensation of any Officer described in Article 15.

(b) The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings of committees shall be governed by the provisions of Article 7 applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 14.3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit, with membership, duties, and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE 15 OFFICERS

Section 15.1. OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) (each, an "**Officer**") shall be a President (who shall serve as Chief Executive Officer), a Secretary, and a Chief Financial Officer. ICANN (Internet Corporation for Assigned Names and Numbers) may also have, at the discretion of the Board, any additional officers that it deems appropriate. Any person, other than the President, may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15.2. ELECTION OF OFFICERS

The officers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chair of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 15.3. REMOVAL OF OFFICERS

Any Officer may be removed, either with or without cause, by a two-thirds (2/3) majority vote of all Directors. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 15.4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of ICANN (Internet Corporation for Assigned Names and Numbers) in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate, unless stated otherwise in these Bylaws. The President shall serve as an ex officio Director, and shall have all the same rights and privileges of any Director. The President shall be empowered to call special meetings of the Board as set forth herein, and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 15.5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose, shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law, and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 15.6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("**CFO**") shall be the chief financial officer of ICANN (Internet Corporation for Assigned Names and Numbers). If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN (Internet Corporation for Assigned Names and Numbers) and shall keep or cause to be kept, in books belonging to ICANN (Internet Corporation for Assigned Names and Numbers), full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN (Internet Corporation for Assigned Names and Numbers) in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN (Internet Corporation for Assigned Names and Numbers) as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN (Internet Corporation for Assigned Names and Numbers). The CFO shall be responsible for ICANN (Internet Corporation for Assigned Names and Numbers)'s financial planning and forecasting and shall assist the President in the preparation of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget, the IANA (Internet Assigned Numbers Authority) Budget and Operating Plan. The CFO shall coordinate and oversee ICANN (Internet Corporation for Assigned Names and Numbers)'s funding, including any audits or other reviews of ICANN (Internet Corporation for Assigned Names and Numbers) or its Supporting Organizations (Supporting Organizations). The CFO shall be responsible for all other matters relating to the financial operation of ICANN (Internet Corporation for Assigned Names and Numbers).

Section 15.7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 15.8. COMPENSATION AND EXPENSES

The compensation of any Officer of ICANN (Internet Corporation for Assigned Names and Numbers) shall be approved by the Board. Expenses incurred in connection with performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President), by another Officer designated by the Board (in the case of the President), or the Board.

Section 15.9. CONFLICTS OF INTEREST

The Board, through the Board Governance Committee, shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE 16 POST-TRANSITION IANA (Internet Assigned Numbers Authority) ENTITY

Section 16.1. DESCRIPTION

ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain as a separate legal entity a California nonprofit public benefit corporation (["**PTI**"]) for the purpose of providing IANA (Internet Assigned Numbers Authority) services, including providing IANA (Internet Assigned Numbers Authority) naming function services pursuant to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, as well as other services as determined by ICANN (Internet Corporation for Assigned Names and Numbers) in coordination with the direct and indirect customers of the IANA (Internet Assigned Numbers Authority) functions. ICANN (Internet Corporation for Assigned Names and Numbers) shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("**Member**"). For the purposes of these Bylaws, the "IANA (Internet Assigned Numbers Authority) naming function" does not include the Internet Protocol (Protocol) numbers and Autonomous System numbers services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services and the root zone maintainer function.

Section 16.2. PTI Governance

(a) ICANN (Internet Corporation for Assigned Names and Numbers), in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and have all other powers of a sole Member under the CCC except as otherwise provided in these Bylaws.

(b) No amendment or modification of the articles of incorporation of PTI shall be effective unless approved by the EC (Empowered Community) (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI's articles of incorporation).

(c) ICANN (Internet Corporation for Assigned Names and Numbers) shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a "**PTI Bylaw Amendment**") if such PTI Bylaw Amendment has been rejected by the EC (Empowered Community) pursuant to the procedures described in Section 16.2(e):

> (i) any change to the corporate form of PTI to an entity that is not a California nonprofit public benefit corporation organized under the CCC or any successor statute;
>
> (ii) any change in the corporate mission of PTI that is materially inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission as set forth in these Bylaws;
>
> (iii) any change to the status of PTI as a corporation with members;
>
> (iv) any change in the rights of ICANN (Internet Corporation for Assigned Names and Numbers) as the sole Member of PTI, including voting, classes of membership, rights, privileges, preferences, restrictions and conditions;
>
> (v) any change that would grant rights to any person or entity (other than ICANN (Internet Corporation for Assigned Names and Numbers)) with respect to PTI as designators or otherwise to: (A) elect or designate directors of PTI; or (B) approve any amendments to the articles of incorporation or bylaws of PTI;
>
> (vi) any change in the number of directors of the board of directors of PTI (the "**PTI Board**");
>
> (vii) any changes in the allocation of directors on the PTI Board between independent directors and employees of ICANN (Internet Corporation for Assigned Names and Numbers) or employees

of PTI or to the definition of "independent" (as used in PTI's bylaws) for purposes of determining whether a director of PTI is independent;

(viii) the creation of any committee of the PTI Board with the power to exercise the authority of the PTI Board;

(ix) any change in the procedures for nominating independent PTI directors;

(x) the creation of classes of PTI directors or PTI directors with different terms or voting rights;

(xi) any change in PTI Board quorum requirements or voting requirements;

(xii) any change to the powers and responsibilities of the PTI Board or the PTI officers;

(xiii) any change to the rights to exculpation and indemnification that is adverse to the exculpated or indemnified party, including with respect to advancement of expenses and insurance, provided to directors, officers, employees or other agents of PTI; or

(xiv) any change to the requirements to amend the articles of incorporation or bylaws of PTI.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall not take any of the following actions (together with the PTI Bylaw Amendments, "**PTI Governance Actions**") if such PTI Governance Action has been rejected by the EC (Empowered Community) pursuant to the procedures described in Section 16.2(e).

(i) Any resignation by ICANN (Internet Corporation for Assigned Names and Numbers) as sole Member of PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN (Internet Corporation for Assigned Names and Numbers) of its membership in PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN (Internet Corporation for Assigned Names and Numbers) of any right arising from its membership in PTI.

(ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process (as defined in Section 19.1(a)) that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.

(iii) Any merger, consolidation, sale or reorganization of PTI.

(iv) Any dissolution, liquidation or winding-up of the business and affairs of PTI or the commencement of any other voluntary bankruptcy proceeding of PTI.

(e) Promptly after the Board approves a PTI Governance Action (a "**PTI Governance Action Approval**"), the Secretary shall provide a notice of the Board's decision to the EC (Empowered Community) Administration and the Decisional Participants ("**Board Notice**"), which Board Notice shall enclose a copy of the PTI Governance Action that is the subject of the PTI Governance Action Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A PTI Governance Action shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant (as defined in Section 2.2(c)(i) of Annex D) to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice (as defined in Section 2.2(c)(ii) of Annex D) is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(b) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(ii) A PTI Governance Action that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(iii) Following receipt of an EC (Empowered Community) Rejection Notice relating to a PTI Governance Action, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the PTI Governance Action in determining whether or not to develop a new PTI Governance Action and the substance of such new PTI Governance Action, which shall be subject to the procedures of this Section 16.2.

Section 16.3. IANA (Internet Assigned Numbers Authority) NAMING FUNCTION CONTRACT

(a) On or prior to 1 October 2016, ICANN (Internet Corporation for Assigned Names and Numbers) shall enter into a contract with PTI for the performance of the IANA (Internet Assigned Numbers Authority)

naming function (as it may be amended or modified, the "**IANA (Internet Assigned Numbers Authority) Naming Function Contract**") and a related statement of work (the "**IANA (Internet Assigned Numbers Authority) Naming Function SOW**"). Except as to implement any modification, waiver or amendment to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to Section 18.6 or an SCWG Recommendation approved pursuant to Section 19.4 (which, for the avoidance of doubt, shall not be subject to this Section 16.3(a)), ICANN (Internet Corporation for Assigned Names and Numbers) shall not agree to modify, amend or waive any Material Terms (as defined below) of the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW if a majority of each of the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils reject the proposed modification, amendment or waiver. The following are the "**Material Terms**" of the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW:

> (i) The parties to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;
>
> (ii) The initial term and renewal provisions of the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;
>
> (iii) The manner in which the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW may be terminated;
>
> (iv) The mechanisms that are available to enforce the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW;
>
> (v) The role and responsibilities of the CSC (as defined in Section 17.1), escalation mechanisms and/or the IFR (as defined in Section 18.1);
>
> (vi) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's provisions requiring that fees charged by PTI be based on direct costs and resources incurred by PTI;
>
> (vii) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's prohibition against subcontracting;
>
> (viii)The availability of the IRP as a point of escalation for claims of PTI's failure to meet defined service level expectations;
>
> (ix) The IANA (Internet Assigned Numbers Authority) Naming Function Contract's audit requirements; and
>
> (x) The requirements related to ICANN (Internet Corporation for Assigned Names and Numbers) funding of PTI.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall enforce its rights under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and the IANA (Internet Assigned Numbers Authority) Naming Function SOW.

ARTICLE 17 CUSTOMER STANDING COMMITTEE

Exhibit R-34

Section 17.1. DESCRIPTION

ICANN (Internet Corporation for Assigned Names and Numbers) shall establish a Customer Standing Committee ("**CSC**") to monitor PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW.

The mission of the CSC is to ensure continued satisfactory performance of the IANA (Internet Assigned Numbers Authority) naming function for the direct customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.

The CSC will achieve this mission through regular monitoring of the performance of the IANA (Internet Assigned Numbers Authority) naming function against the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW and through mechanisms to engage with PTI to remedy identified areas of concern.

The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), which might then decide to take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) may address matters escalated by the CSC, pursuant to their operating rules and procedures.

Section 17.2. COMPOSITION, APPOINTMENT, TERM AND REMOVAL

(a) The CSC shall consist of:

> (i) Two individuals representing gTLD (generic Top Level Domain) registry operators appointed by the Registries Stakeholder Group;
>
> (ii) Two individuals representing ccTLD (Country Code Top Level Domain) registry operators appointed by the ccNSO (Country Code Names Supporting Organization); and
>
> (iii) One individual liaison appointed by PTI,
>
> each appointed in accordance with the rules and procedures of the appointing organization; provided that such individuals should have direct experience and knowledge of the IANA (Internet Assigned Numbers Authority) naming function.

(b) If so determined by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD (Country Code Top Level Domain) or gTLD (generic Top Level Domain), who shall be appointed by the ccNSO (Country Code Names Supporting Organization) and the GNSO (Generic Names Supporting Organization). Such representative shall be required to submit a letter of support from the registry operator it represents.

(c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (Generic Names Supporting Organization) (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC (At-Large Advisory Committee), (iii) either the NRO (Number Resource Organization) or ASO (Address Supporting Organization) (as determined by the ASO (Address Supporting Organization)), (iv) GAC (Governmental Advisory Committee), (v) RSSAC (Root Server System Advisory Committee), (vi) SSAC (Security and

Stability Advisory Committee) and (vii) any other Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) established under these Bylaws.

(d) The GNSO (Generic Names Supporting Organization) and ccNSO (Country Code Names Supporting Organization) shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) shall approve each annual slate of members and liaisons being recommended for a new term.

(e) The CSC members and liaisons shall select from among the CSC members who will serve as the CSC's liaison to the IFRT (as defined in Section 18.1) and any Separation Cross-Community Working Group ("**SCWG**").

(f) Any CSC member or liaison may be removed and replaced at any time and for any reason or no reason by the organization that appointed such member or liaison.

(g) In addition, the Chair of the CSC may recommend that a CSC member or liaison be removed by the organization that appointed such member or liaison, upon any of the following: (i) (A) for not attending without sufficient cause a minimum of nine CSC meetings in a one-year period (or at least 75% of all CSC meetings in a one-year period if less than nine meetings were held in such one-year period) or (B) if such member or liaison has been absent for more than two consecutive meetings without sufficient cause; or (ii) for grossly inappropriate behavior.

(h) A vacancy on the CSC shall be deemed to exist in the event of the death, resignation or removal of any CSC member or liaison. Vacancies shall be filled by the organization(s) that appointed such CSC member or liaison. The appointing organization(s) shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the Chair of the CSC. The organization(s) responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 17.3.CSC CHARTER; PERIODIC REVIEW

(a) The CSC shall act in accordance with its charter (the "**CSC Charter**").

(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review will be determined by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) and the findings of the review will be published on the Website.

(c) The CSC Charter shall be reviewed by a committee of representatives from the ccNSO (Country Code Names Supporting Organization) and the Registries Stakeholder Group selected by such organizations. This review shall commence one year after the first meeting of the CSC. Thereafter, the CSC Charter shall be reviewed by such committee of representatives from the ccNSO (Country Code Names Supporting Organization) and the Registries Stakeholder Group selected by such organizations at the request of the CSC, ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization), the Board and/or the PTI Board and/or by an IFRT in connection with an IFR.

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization), any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN (Internet

Corporation for Assigned Names and Numbers). Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Section 17.4. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the CSC to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the CSC.

ARTICLE 18 IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEWS

Section 18.1. IANA (Internet Assigned Numbers Authority) NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "**IFR**") of PTI's performance of the IANA (Internet Assigned Numbers Authority) naming function against the contractual requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract and the IANA (Internet Assigned Numbers Authority) Naming Function SOW to be carried out by an IANA (Internet Assigned Numbers Authority) Function Review Team ("**IFRT**") established in accordance with Article 18, as follows:

(a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and

(b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

(a) The first Periodic IFR shall be convened no later than [1 October 2018].

(b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.

(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (ii) a GNSO (Generic Names Supporting Organization) Supermajority. Any decision by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

(a) Review and evaluate the performance of PTI against the requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN (Internet Corporation for Assigned Names and Numbers) community, and determine whether to make any recommendations with respect to PTI's performance;

(b) Review and evaluate the performance of PTI against the requirements set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(c) Review the IANA (Internet Assigned Numbers Authority) Naming Function SOW and determine whether to recommend any amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;

(d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;

(e) Review and evaluate the performance and effectiveness of the EC (Empowered Community) with respect to actions taken by the EC (Empowered Community), if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;

(f) Review and evaluate the performance of the IANA (Internet Assigned Numbers Authority) naming function according to established service level expectations during the IFR period being reviewed and compared to the immediately preceding Periodic IFR period;

(g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers));

(i) Consider input from the CSC and the community on PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW;

(j) Identify process or other areas for improvement in the performance of the IANA (Internet Assigned Numbers Authority) naming function under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW and the performance of the CSC and the EC (Empowered Community) as it relates to oversight of PTI; and

(k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

(a) Reports provided by PTI pursuant to the IANA (Internet Assigned Numbers Authority) Naming Function Contract and/or IANA (Internet Assigned Numbers Authority) Naming Function SOW during the IFR period being reviewed, any portion of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with Section 4.6(a)(vi);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN (Internet Corporation for Assigned Names and Numbers) meetings, responses to public surveys related to PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (Internet Corporation for Assigned Names and Numbers) (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN (Internet Corporation for Assigned Names and Numbers) and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.3 and comply with this Section 18.5.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD (generic Top Level Domain) registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD (Country Code Top Level Domain) registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO (Country Code Names Supporting Organization).

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA (Internet Assigned Numbers Authority) Naming Function Contract or the IANA (Internet Assigned Numbers Authority) Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN (Internet Corporation for Assigned Names and Numbers).

Section 18.6. RECOMMENDATIONS TO AMEND THE IANA (Internet Assigned Numbers Authority) NAMING FUNCTION CONTRACT, IANA (Internet Assigned Numbers Authority) NAMING FUNCTION SOW OR CSC

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract, IANA (Internet Assigned Numbers Authority) Naming Function SOW and/or

the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA (Internet Assigned Numbers Authority) Naming Function Contract, IANA (Internet Assigned Numbers Authority) Naming Function SOW or CSC Charter is proposed:

(i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;

(ii) Consult with the CSC;

(iii) Conduct a public input session for ccTLD (Country Code Top Level Domain) and gTLD (generic Top Level Domain) registry operators; and

(iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs:

(i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the IFR Recommendation; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(d).

(c) If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 18.6(b)(i) or (y) does not resolve to either accept or reject an IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.6(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.6(b)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum (as defined in Section 2.3(a) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as

the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in Section 2.2(d)(i) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation (either, a "**Post-Forum IFR Recommendation Decision**").

(A)If the Board resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to Section 18.6(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an IFR Recommendation (an "**IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.

> (ii) An IFR Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process as described in Article 19.

(f) Timelines for implementing any amendments to the IANA (Internet Assigned Numbers Authority) Naming Function Contract or IANA (Internet Assigned Numbers Authority) Naming Function SOW shall be reasonably agreed between the IFRT, ICANN (Internet Corporation for Assigned Names and Numbers) and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Three representatives who are associated with ccTLD (Country Code Top Level Domain) managers, appointed by the ccNSO (Country Code Names Supporting Organization) Council. Representatives need not be associated with a ccNSO (Country Code Names Supporting Organization) member. The ccNSO (Country Code Names Supporting Organization) Council should use an inclusive process, which is open to all ccTLD (Country Code Top Level Domain) managers, independent of their membership to the ccNSO (Country Code Names Supporting Organization). It is strongly recommended that the ccNSO (Country Code Names Supporting Organization) Council reaches out to all ccTLD (Country Code Top Level Domain) managers directly and or through regional ccTLD (Country Code Top Level Domain) organizations (i.e., AfTLD, APTLD (Council of the Asia Pacific country code Top Level Domains), LACTLD (Latin American and Caribbean ccTLDs), and CENTR (Council of European National Top level domain Registries)) in seeking volunteers;

(b) Two representatives appointed by the Registries Stakeholder Group;

(c) One representative appointed by the Registrars Stakeholder Group;

(d) One representative appointed by the Commercial Stakeholder Group;

(e) One representative appointed by the Non-Commercial Stakeholder Group;

(f) One representative appointed by the GAC (Governmental Advisory Committee);

(g) One representative appointed by the SSAC (Security and Stability Advisory Committee);

p>(h) One representative appointed by the RSSAC (Root Server System Advisory Committee);
(i) One representative appointed by the ALAC (At-Large Advisory Committee);

(j) One liaison appointed by the CSC;

(k) One liaison who may be appointed by the ASO (Address Supporting Organization); and

(l) One liaison who may be appointed by the IAB (Internet Architecture Board).

(m) The IFRT shall also include an unlimited number of non-member, non-liaison participants.

(n) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA (Internet Assigned Numbers Authority) functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, and the ccNSO (Country Code Names Supporting Organization) and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO (Generic Names Supporting Organization) from one of the members appointed pursuant to clauses (c)-(f) of Section 18.7 and one appointed by the ccNSO (Country Code Names Supporting Organization) from one of the members appointed pursuant to clauses (a)-(b) of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN (Internet Corporation for Assigned Names and Numbers) staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN (Internet Corporation for Assigned Names and Numbers).

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

> (i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.
>
> (ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The

> organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers) and through discussions during ICANN (Internet Corporation for Assigned Names and Numbers)'s public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA (Internet Assigned Numbers Authority) Naming Function Contract and IANA (Internet Assigned Numbers Authority) Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

> (i) The Remedial Action Procedures of the CSC set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO

(Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) according to each organization's respective operating procedures;

(ii) The IANA (Internet Assigned Numbers Authority) Problem Resolution Process set forth in the IANA (Internet Assigned Numbers Authority) Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) according to each organization's respective operating procedures;

(iii) The ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), if a public comment period is requested by the ccNSO (Country Code Names Supporting Organization) and the GNSO (Generic Names Supporting Organization), a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA (Internet Assigned Numbers Authority) naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT relating to the Special IFR, including but not limited to any recommendation to initiate an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance.

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

(i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the Special IFR Recommendation; and

(iii) The EC (Empowered Community) has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 18.12(c)(i) or (y) does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR Recommendation (either, a "**Post-Forum Special IFR Recommendation Decision**").

(A)If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.6(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(e) Promptly after the Board approves a Special IFR Recommendation (a "**Special IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community)

Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process as described in Article 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19IANA (Internet Assigned Numbers Authority) NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA (Internet Assigned Numbers Authority) Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA

(Internet Assigned Numbers Authority) naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA (Internet Assigned Numbers Authority) naming function instead of PTI ("**IANA (Internet Assigned Numbers Authority) Naming Function RFP**"), the selection of an IANA (Internet Assigned Numbers Authority) naming function operator other than PTI, termination or non-renewal of the IANA (Internet Assigned Numbers Authority) Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN (Internet Corporation for Assigned Names and Numbers).

(b) The Board shall establish an SCWG if each of the following occurs:

(i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP (Policy Development Process) recommendation that is supported by a GNSO (Generic Names Supporting Organization) Supermajority; and

(iv) The EC (Empowered Community) has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional

Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Creation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.

(ii) An SCWG Creation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA (Internet Assigned Numbers Authority) Naming Function RFP, the SCWG shall:

(i) Develop IANA (Internet Assigned Numbers Authority) Naming Function RFP guidelines and requirements for the performance of the IANA (Internet Assigned Numbers Authority) naming function, in a manner consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN (Internet Corporation for Assigned Names and Numbers) as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers)) on requirements to plan and participate in the IANA (Internet Assigned Numbers Authority) Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA (Internet Assigned Numbers Authority) Naming Function RFP is approved pursuant to Section 19.4(b) and the EC (Empowered Community) does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN (Internet Corporation for Assigned Names and Numbers), shall:

(i) Issue the IANA (Internet Assigned Numbers Authority) Naming Function RFP;

(ii) Review responses from interested candidates to the IANA (Internet Assigned Numbers Authority) Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN (Internet Corporation for Assigned Names and Numbers) should contract with to perform the IANA (Internet Assigned Numbers Authority) naming function.

(d) If the SCWG recommends an IANA (Internet Assigned Numbers Authority) Naming Function Separation Process other than the issuance of an IANA (Internet Assigned Numbers Authority) Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA (Internet Assigned Numbers Authority) Naming Function Separation Process.

Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN

(Internet Corporation for Assigned Names and Numbers)) and may recommend discussions during ICANN (Internet Corporation for Assigned Names and Numbers)'s public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post the SCWG's final report on the Website.

Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in Section 19.2 and comply with this Section 19.4.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA (Internet Assigned Numbers Authority) Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

> (i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO (Country Code Names Supporting Organization) Council (pursuant to the ccNSO (Country Code Names Supporting Organization)'s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO (Country Code Names Supporting Organization) Council's members) and (B) a GNSO (Generic Names Supporting Organization) Supermajority;
>
> (ii) After a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO (Country Code Names Supporting Organization) and GNSO (Generic Names Supporting Organization) Councils pursuant to Section 19.4(b)(i), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP (Policy Development Process) recommendation that is supported by a GNSO (Generic Names Supporting Organization) Supermajority; and
>
> (iii) The EC (Empowered Community) has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with Section 19.4(d).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO (Country Code Names Supporting Organization) Council and GNSO (Generic Names Supporting Organization) Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration

and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.

> (i) ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC (Empowered Community) Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants.
>
> (ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A)If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B)For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C)The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Decision. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

> (i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:
>
> (A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;
>
> (B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of

the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA (Internet Assigned Numbers Authority) naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA (Internet Assigned Numbers Authority) naming function as ICANN (Internet Corporation for Assigned Names and Numbers)'s independent contractor. ICANN (Internet Corporation for Assigned Names and Numbers) shall not be authorized to raise fees from any TLD (Top Level Domain) registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA (Internet Assigned Numbers Authority) naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA (Internet Assigned Numbers Authority) naming function is approved pursuant to Section 19.4(b) and (ii) the EC (Empowered Community) does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN (Internet Corporation for Assigned Names and Numbers) shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation Decision becoming final in accordance with this Section 19.4, ICANN (Internet Corporation for Assigned Names and Numbers) shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO (Country Code Names Supporting Organization) from its ccTLD (Country Code Top Level Domain) registry operator representatives;

(ii) One non-ccNSO (Country Code Names Supporting Organization) ccTLD (Country Code Top Level Domain) representative who is associated with a ccTLD (Country Code Top Level Domain) registry operator that is not a representative of the ccNSO (Country Code Names Supporting Organization), appointed by the ccNSO (Country Code Names Supporting Organization); it is

strongly recommended that the ccNSO (Country Code Names Supporting Organization) consult with the regional ccTLD (Country Code Top Level Domain) organizations (i.e., AfTLD, APTLD (Council of the Asia Pacific country code Top Level Domains), LACTLD (Latin American and Caribbean ccTLDs) and CENTR (Council of European National Top level domain Registries)) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

(v) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC (Governmental Advisory Committee);

(viii) One representative appointed by the SSAC (Security and Stability Advisory Committee);

(ix) One representative appointed by the RSSAC (Root Server System Advisory Committee);

(x) One representative appointed by the ALAC (At-Large Advisory Committee);

(xi) One liaison appointed by the CSC;

(xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;

(xiii) One liaison who may be appointed by the ASO (Address Supporting Organization);

(xiv) One liaison who may be appointed by the IAB (Internet Architecture Board); and

(xv) One liaison who may be appointed by the Board.

(xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA (Internet Assigned Numbers Authority) naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v)that the candidate understands the time necessary to participate in the SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN (Internet Corporation for Assigned Names and Numbers) and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

(i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region, and the ccNSO (Country Code Names Supporting Organization) and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN (Internet Corporation for Assigned Names and Numbers) Geographic Region;

(ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN (Internet Corporation for Assigned Names and Numbers) shall select an ICANN (Internet Corporation for Assigned Names and Numbers) staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN (Internet Corporation for Assigned Names and Numbers) and the SCWG and PTI. Communications between the SCWG and the ICANN (Internet Corporation for Assigned Names and Numbers) and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO (Generic Names Supporting Organization) from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO (Country Code Names Supporting Organization) from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree, but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the guidelines and procedures applicable to ICANN (Internet Corporation for Assigned Names and Numbers) Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8. ADMINISTRATIVE SUPPORT

ICANN (Internet Corporation for Assigned Names and Numbers) shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN (Internet Corporation for Assigned Names and Numbers) to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 20.1. INDEMNIFICATION GENERALLY

ICANN (Internet Corporation for Assigned Names and Numbers) shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN (Internet Corporation for Assigned Names and Numbers), provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN (Internet Corporation for Assigned Names and Numbers) includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (Internet Corporation for Assigned Names and Numbers) (including a member of the EC (Empowered Community), the EC (Empowered Community) Administration, any Supporting Organization (Supporting Organization), any Advisory Committee (Advisory Committee), the Nominating Committee, any other ICANN (Internet Corporation for Assigned Names and Numbers) committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN (Internet Corporation for Assigned Names and Numbers) as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN (Internet Corporation for Assigned Names and Numbers) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN (Internet Corporation for Assigned Names and Numbers) would have the power to indemnify the agent against that liability under the provisions of this Article 20.

Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC (Empowered Community) Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN (Internet Corporation for Assigned Names and Numbers) shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN (Internet Corporation for Assigned Names and Numbers)'s best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN (Internet Corporation for Assigned Names and Numbers) in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN (Internet Corporation for Assigned Names and Numbers)'s sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of ICANN (Internet Corporation for Assigned Names and Numbers), and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind ICANN (Internet Corporation for Assigned Names and Numbers) or to render it liable for any debts or obligations.

Section 21.2. DEPOSITS

All funds of ICANN (Internet Corporation for Assigned Names and Numbers) not otherwise employed shall be deposited from time to time to the credit of ICANN (Internet Corporation for Assigned Names and Numbers) in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 21.3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of ICANN (Internet Corporation for Assigned Names and Numbers) shall be signed by such Officer or Officers, agent or agents, of ICANN (Internet Corporation for Assigned Names and Numbers) and in such a manner as shall from time to time be determined by resolution of the Board.

Section 21.4. LOANS

No loans shall be made by or to ICANN (Internet Corporation for Assigned Names and Numbers) and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances; provided, however, that no loans shall be made by ICANN (Internet Corporation for Assigned Names and Numbers) to its Directors or Officers.

Section 21.5. NOTICES

All notices to be given to the EC (Empowered Community) Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either (a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC (Empowered Community) Administration, the Decisional Participants, and ICANN (Internet Corporation for Assigned Names and Numbers) will work together to implement such notice means.

If to ICANN (Internet Corporation for Assigned Names and Numbers), addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: [___]

Attention: Secretary

If to a Decisional Participant or the EC (Empowered Community) Administration, addressed to the contact information available at [insert Website reference].

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

Section 22.1. ACCOUNTING

The fiscal year end of ICANN (Internet Corporation for Assigned Names and Numbers) shall be determined by the Board.

Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN (Internet Corporation for Assigned Names and Numbers) shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN (Internet Corporation for Assigned Names and Numbers) to Directors (including reimbursements of expenses) and a description of ICANN (Internet Corporation for Assigned Names and Numbers)'s progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN (Internet Corporation for Assigned Names and Numbers) shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN (Internet Corporation for Assigned Names and Numbers)'s fiscal year.

Section 22.4. BUDGETS

(a) ICANN (Internet Corporation for Assigned Names and Numbers) Budget

(i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN (Internet Corporation for Assigned Names and Numbers) for the next fiscal year (the "**ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"), which shall be posted on the Website. The ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.

(ii) Prior to approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the ICANN (Internet Corporation for Assigned Names and Numbers) Budget development process, and comply with the requirements of this Section 22.4(a).

(iii) Prior to approval of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the Board, a draft of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget and may direct ICANN (Internet Corporation for Assigned Names and Numbers) Staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an ICANN (Internet Corporation for Assigned Names and Numbers) Budget (an "**ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in Section 2.2(a) of Annex D) relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that is the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN (Internet Corporation for Assigned Names and Numbers) Budget Approval and the effectiveness of such ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An ICANN (Internet Corporation for Assigned Names and Numbers) Budget that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the ICANN (Internet Corporation for Assigned Names and Numbers) Budget in determining the substance of such new ICANN (Internet Corporation for Assigned Names and Numbers) Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN (Internet Corporation for Assigned Names and Numbers) Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN (Internet Corporation for Assigned Names and Numbers), the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget**"), which Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall be effective until such time as an ICANN (Internet Corporation for Assigned Names and Numbers) Budget has been effectively approved by the Board and not rejected by the EC (Empowered Community) pursuant to this Section 22.4(a).

(b) IANA (Internet Assigned Numbers Authority) Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA (Internet Assigned Numbers Authority) department, which budget shall include itemization of the direct costs for ICANN (Internet Corporation for Assigned Names and Numbers)'s IANA (Internet Assigned Numbers Authority) department, all costs for PTI, direct costs for shared resources between ICANN (Internet Corporation for Assigned Names and Numbers) and PTI and support functions provided by ICANN (Internet Corporation for Assigned Names and Numbers) to PTI and ICANN (Internet Corporation for Assigned Names and Numbers)'s IANA (Internet Assigned Numbers Authority) department for the next fiscal year (the "**IANA (Internet Assigned Numbers Authority) Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN (Internet Corporation for Assigned Names and Numbers) planning process, ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA (Internet Assigned Numbers Authority) functions for the next fiscal year ("**PTI Budget**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), as well as the Registries Stakeholder Group, the IAB (Internet Architecture Board) and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN (Internet Corporation for Assigned Names and Numbers) shall require PTI to submit the PTI Budget to ICANN (Internet Corporation for Assigned Names and Numbers) as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

(ii) Prior to approval of the IANA (Internet Assigned Numbers Authority) Budget by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees), as well as the Registries Stakeholder Group, IAB (Internet Architecture Board) and RIRs, during the IANA (Internet Assigned Numbers Authority) Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA (Internet Assigned Numbers Authority) Budget by the Board, a draft of the IANA (Internet Assigned Numbers Authority) Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the IANA (Internet Assigned Numbers Authority) Budget and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an IANA (Internet Assigned Numbers Authority) Budget (an "**IANA (Internet Assigned Numbers Authority) Budget Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA (Internet Assigned Numbers Authority) Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA (Internet Assigned Numbers Authority) Budget that is the subject of the IANA (Internet Assigned Numbers Authority) Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA (Internet Assigned Numbers Authority) Budget Approval and the effectiveness of such IANA (Internet Assigned Numbers Authority) Budget shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An IANA (Internet Assigned Numbers Authority) Budget that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an IANA (Internet Assigned Numbers Authority) Budget, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the IANA (Internet Assigned Numbers Authority) Budget in determining the substance of such new IANA (Internet Assigned Numbers Authority) Budget, which shall be subject to the procedures of this Section 22.4(b).

(ix) If an IANA (Internet Assigned Numbers Authority) Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN (Internet Corporation for Assigned Names and Numbers), the Board shall adopt a temporary budget in accordance with Annex F hereto ("**Caretaker IANA (Internet Assigned Numbers Authority) Budget**"), which Caretaker IANA (Internet Assigned Numbers Authority) Budget shall be effective until such time as an IANA (Internet Assigned Numbers Authority) Budget has been effectively approved by the Board and not rejected by the EC (Empowered Community) pursuant to this Section 22.4(b).

(c) If an IANA (Internet Assigned Numbers Authority) Budget does not receive an EC (Empowered Community) Rejection Notice but an ICANN (Internet Corporation for Assigned Names and Numbers) Budget receives an EC (Empowered Community) Rejection Notice, any subsequent revised ICANN (Internet Corporation for Assigned Names and Numbers) Budget shall not alter the expenditures allocated for the IANA (Internet Assigned Numbers Authority) Budget.

(d) If an ICANN (Internet Corporation for Assigned Names and Numbers) Budget does not receive an EC (Empowered Community) Rejection Notice but an IANA (Internet Assigned Numbers Authority) Budget receives an EC (Empowered Community) Rejection Notice, any subsequent revised IANA (Internet Assigned Numbers Authority) Budget shall, once approved, be deemed to automatically modify the ICANN (Internet Corporation for Assigned Names and Numbers) Budget in a manner determined by the Board without any further right of the EC (Empowered Community) to reject the ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission or to fulfilling ICANN (Internet Corporation for Assigned Names and Numbers)'s pre-existing legal obligations and protecting ICANN (Internet Corporation for Assigned Names and Numbers) from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA (Internet Assigned Numbers Authority) functions (so long as they are performed by ICANN (Internet Corporation for Assigned Names and Numbers) or pursuant to contract with ICANN (Internet Corporation for Assigned Names and Numbers)) and PTI, ICANN (Internet Corporation for Assigned Names and Numbers) shall be required to plan for and allocate funds to ICANN (Internet Corporation for Assigned Names and Numbers)'s performance of the IANA (Internet Assigned Numbers Authority) functions and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA (Internet Assigned Numbers Authority) functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN (Internet Corporation for Assigned Names and Numbers) Budget and the IANA (Internet Assigned Numbers Authority) Budget shall be published on the Website.

Section 22.5. PLANS

(a) Operating Plan

(i) At least 45 days prior to the commencement of each fiscal year, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed operating plan of ICANN (Internet Corporation for Assigned Names and Numbers) for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Operating Plan by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).

(iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the Operating Plan and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to an Operating Plan, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Operating Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall prepare and submit to the Board a proposed strategic plan of ICANN (Internet Corporation for Assigned Names and Numbers) for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) staff shall consult with the Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Strategic Plan and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the subject of the Strategic Plan Approval. ICANN (Internet Corporation for Assigned Names and Numbers) shall post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC (Empowered Community) Administration and the Decisional Participants. The EC (Empowered Community) Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; and

(C)(1) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC (Empowered Community) pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC (Empowered Community) Rejection Notice relating to a Strategic Plan, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by ICANN (Internet Corporation for Assigned Names and Numbers), with the goal of fully recovering the reasonable costs of the operation of ICANN (Internet Corporation for Assigned Names and Numbers) and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN (Internet Corporation for Assigned Names and Numbers). Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN (Internet Corporation for Assigned Names and Numbers), as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community). The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN (Internet Corporation for Assigned Names and Numbers) relevant to the operation of ICANN (Internet Corporation for Assigned Names and Numbers) as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN (Internet Corporation for Assigned Names and Numbers)'s operations or that relate to the minutiae of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN (Internet Corporation for Assigned Names and Numbers) declines such request (as provided below), ICANN (Internet Corporation for Assigned Names and Numbers) shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN (Internet Corporation for Assigned Names and Numbers) for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community). ICANN (Internet Corporation for Assigned Names and Numbers) shall post all Inspection Requests to the Website.

(b) ICANN (Internet Corporation for Assigned Names and Numbers) may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC (Empowered Community), (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN (Internet Corporation for Assigned Names and Numbers) may not make available under applicable law because such documents or communications contain confidential information that ICANN (Internet Corporation for Assigned Names and Numbers) is required to protect. If an Inspection Request is overly broad, ICANN (Internet Corporation for Assigned Names and Numbers) may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN (Internet Corporation for Assigned Names and Numbers) and shall not be conducted in a manner that unreasonably interferes with ICANN (Internet Corporation for Assigned Names and Numbers)'s operations. All such inspections shall be subject to reasonable procedures established by ICANN (Internet Corporation for Assigned Names and Numbers), including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN (Internet Corporation for Assigned Names and Numbers) may require the inspectors to sign a non-disclosure agreement. The Inspecting Decisional Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN (Internet Corporation for Assigned Names and Numbers) may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN (Internet Corporation for Assigned Names and Numbers)'s document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN (Internet Corporation for Assigned Names and Numbers) has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC (Empowered Community) to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN (Internet Corporation for Assigned Names and Numbers) staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN (Internet Corporation for Assigned Names and Numbers) has committed fraud or that there has been a gross mismanagement of ICANN (Internet Corporation for Assigned Names and Numbers)'s resources, ICANN (Internet Corporation for Assigned Names and Numbers) shall retain a third-party, independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN (Internet Corporation for Assigned Names and Numbers) shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN (Internet Corporation for Assigned Names and Numbers) will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

ARTICLE 23 MEMBERS

ICANN (Internet Corporation for Assigned Names and Numbers) shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN (Internet Corporation for Assigned Names and Numbers) document, or in any action of the Board or staff. For the avoidance of doubt, the EC (Empowered Community) is not a member of ICANN (Internet Corporation for Assigned Names and Numbers).

ARTICLE 24 OFFICES AND SEAL

Section 24.1. OFFICES

The principal office for the transaction of the business of ICANN (Internet Corporation for Assigned Names and Numbers) shall be in the County of Los Angeles, State of California, United States of America. ICANN (Internet Corporation for Assigned Names and Numbers) may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 24.2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 25 AMENDMENTS

Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

> (i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D;
>
> (ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D; or
>
> (iii) (A) An EC (Empowered Community) Rejection Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and in compliance with

> Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC (Empowered Community) pursuant to the EC (Empowered Community)'s rejection right as described in Article 2 of Annex D.

(f) If an EC (Empowered Community) Rejection Notice is timely delivered by the EC (Empowered Community) Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC (Empowered Community). A Standard Bylaw Amendment that has been rejected by the EC (Empowered Community) shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC (Empowered Community) Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC (Empowered Community) Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC (Empowered Community) Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC (Empowered Community) of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC (Empowered Community) as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC (Empowered Community) Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC (Empowered Community) Administration timely delivers an EC (Empowered Community) Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC (Empowered Community), and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC (Empowered Community) Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN (Internet Corporation for Assigned Names and Numbers) and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC (Empowered Community). The Secretary shall promptly inform the Board of the receipt of an EC (Empowered Community) Approval Notice.

(g) If an EC (Empowered Community) Approval Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC (Empowered Community), shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC (Empowered Community), ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the concerns raised by the EC (Empowered Community) in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as applicable, and the substance thereof, which shall be subject to the procedures of this Section 25.2.

Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (Supporting Organization) (a "**PDP (Policy Development Process) Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP (Policy Development Process) Amendment.

Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC (Empowered Community), the Decisional Participants, the Supporting Organizations (Supporting Organizations), the Advisory Committees (Advisory Committees) nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN (Internet Corporation for Assigned Names and Numbers)'S ASSETS

(a) ICANN (Internet Corporation for Assigned Names and Numbers) may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN (Internet Corporation for Assigned Names and Numbers)'s assets (an "**Asset Sale**") only upon approval

by a three-fourths vote of all Directors and the approval of the EC (Empowered Community) as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to conduct one or more additional public comment periods in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC (Empowered Community) Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC (Empowered Community) Administration timely delivers an EC (Empowered Community) Approval Notice for the Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC (Empowered Community), and the Asset Sale may be consummated by ICANN (Internet Corporation for Assigned Names and Numbers), but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC (Empowered Community). The Secretary shall promptly inform the Board of the receipt of an EC (Empowered Community) Approval Notice.

(f) If an EC (Empowered Community) Approval Notice is not timely delivered by the EC (Empowered Community) Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC (Empowered Community), shall be null and void, and, notwithstanding its approval by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC (Empowered Community), ICANN (Internet Corporation for Assigned Names and Numbers) staff and the Board shall consider the concerns raised by the EC (Empowered Community) in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall be subject to the procedures of this Article 26.

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability ("**CCWG-Accountability**") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO (Generic Names Supporting Organization), ALAC (At-Large Advisory Committee), ccNSO (Country Code Names Supporting Organization), GAC (Governmental Advisory Committee), ASO (Address Supporting Organization) and SSAC (Security and Stability Advisory Committee) ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that

the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

(i) Improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s standards for diversity at all levels;

(ii) ICANN (Internet Corporation for Assigned Names and Numbers) staff accountability;

(iii) Supporting Organization (Supporting Organization) and Advisory Committee (Advisory Committee) accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;

(iv) Improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency, focusing on enhancements to ICANN (Internet Corporation for Assigned Names and Numbers)'s existing DIDP, transparency of ICANN (Internet Corporation for Assigned Names and Numbers)'s interactions with governments, improvements to ICANN (Internet Corporation for Assigned Names and Numbers)'s whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report (**"Work Stream 1 Recommendations"**). For the avoidance of doubt, that process and criteria includes:

(i) All Work Stream 2 Recommendations must further the following principles:

(A)Support and enhance the multistakeholder model;

(B)Maintain the security, stability and resiliency of the DNS (Domain Name System);

(C)Meet the needs and expectations of the global customers and partners of the IANA (Internet Assigned Numbers Authority) services;

(D)Maintain the openness of the Internet; and

(E)Not result in ICANN (Internet Corporation for Assigned Names and Numbers) becoming a government-led or an inter-governmental organization.

(ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.

(iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.

(iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.

If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.

(v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board shall provide detailed rationale to accompany its action. If the Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall be the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN (Internet Corporation for Assigned Names and Numbers)'s other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN (Internet Corporation for Assigned Names and Numbers) or the Board that occurred prior to the effectiveness of the FOI-HR.

Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN (Internet Corporation for Assigned Names and Numbers) in compliance with the Bylaws.

Section 27.4. CONTRACTS WITH ICANN (Internet Corporation for Assigned Names and Numbers)

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN (Internet Corporation for Assigned Names and Numbers) shall continue in effect according to their terms.

Annex A: GNSO (Generic Names Supporting Organization) Policy Development Process

The following process shall govern the GNSO (Generic Names Supporting Organization) policy development process ("**PDP (Policy Development Process)**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are not intended to result in a Consensus (Consensus) Policy, the Council may act through other processes.

Section 1. **Required Elements of a Policy Development Process**

The following elements are required at a minimum to form Consensus (Consensus) Policies as defined within ICANN (Internet Corporation for Assigned Names and Numbers) contracts, and any other policies for which the GNSO (Generic Names Supporting Organization) Council requests application of this Annex A:

a. Final Issue Report requested by the Board, the GNSO (Generic Names Supporting Organization) Council ("Council") or Advisory Committee (Advisory Committee), which should include at a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how that party Is affected by the issue;

b. Formal initiation of the Policy Development Process by the Council;

c. Formation of a Working Group or other designated work method;

d. Initial Report produced by a Working Group or other designated work method;

e. Final Report produced by a Working Group, or other designated work method, and forwarded to the Council for deliberation;

f. Council approval of PDP (Policy Development Process) Recommendations contained in the Final Report, by the required thresholds;

g. PDP (Policy Development Process) Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and

h. Board approval of PDP (Policy Development Process) Recommendations.

Section 2. **Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a Policy Development Process Manual ("**PDP (Policy Development Process) Manual**") within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting

Organization) Council. The PDP (Policy Development Process) Manual shall contain specific additional guidance on completion of all elements of a PDP (Policy Development Process), including those elements that are not otherwise defined in these Bylaws. The PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO (Generic Names Supporting Organization) Council ("Council") to begin the process outlined the PDP (Policy Development Process) Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request. The GNSO (Generic Names Supporting Organization) Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee (Advisory Committee) Request. An Advisory Committee (Advisory Committee) may raise an issue for policy development by action of such committee to request an Issue Report, and transmission of that request to the Staff Manager and GNSO (Generic Names Supporting Organization) Council.

Section 4. **Creation of an Issue Report**

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board; (ii) a properly supported motion from the GNSO (Generic Names Supporting Organization) Council; or (iii) a properly supported motion from an Advisory Committee (Advisory Committee), the Staff Manager will create a report (a "**Preliminary Issue Report**"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the request for the Issue Report;

c. How that party is affected by the issue, if known;

d. Support for the issue to initiate the PDP (Policy Development Process), if known;

e. The opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization) as set forth in the Bylaws.

f. The opinion of ICANN (Internet Corporation for Assigned Names and Numbers) Staff as to whether the Council should initiate the PDP (Policy Development Process) on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers).

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received.

The Staff Manager should forward the Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO (Generic Names Supporting Organization) Council for consideration for initiation of a PDP (Policy Development Process).

Section 5. **Initiation of the PDP (Policy Development Process)**

The Council may initiate the PDP (Policy Development Process) as follows:

Board Request: If the Board requested an Issue Report, the Council, within the timeframe set forth in the PDP (Policy Development Process) Manual, shall initiate a PDP (Policy Development Process). No vote is required for such action.

GNSO (Generic Names Supporting Organization) Council or Advisory Committee (Advisory Committee) Requests: The Council may only initiate the PDP (Policy Development Process) by a vote of the Council. Initiation of a PDP (Policy Development Process) requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP (Policy Development Process).

Section 6. **Reports**

An Initial Report should be delivered to the GNSO (Generic Names Supporting Organization) Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN (Internet Corporation for Assigned Names and Numbers), which time may be extended in accordance with the PDP (Policy Development Process) Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP (Policy Development Process) Manual.

Section 8. **Preparation of the Board Report**

If the PDP (Policy Development Process) recommendations contained in the Final Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP (Policy Development Process) Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any PDP (Policy Development Process) Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient

to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO (Generic Names Supporting Organization) Supermajority Vote or less than a GNSO (Generic Names Supporting Organization) Supermajority vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 10. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO (Generic Names Supporting Organization) Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

Throughout the PDP (Policy Development Process), from policy suggestion to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each PDP (Policy Development Process) issue. Such status page will outline the completed and upcoming steps in the PDP (Policy Development Process) process, and contain links to key resources (e.g. Reports, Comments Fora, WG (Working Group) Discussions, etc.).

Section 12. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments For a**" and "**Website**" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the PDP (Policy Development Process) will be posted.

"**Supermajority Vote**" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body, with the exception of the GNSO (Generic Names Supporting Organization) Council.

"**Staff Manager**" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the PDP (Policy Development Process).

"**GNSO (Generic Names Supporting Organization) Supermajority Vote**" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP (Policy Development Process). If the Council determines that any ongoing PDP (Policy Development Process) cannot be feasibly transitioned to these updated procedures, the PDP (Policy Development Process) shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO (Generic Names Supporting Organization) Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO (Generic Names Supporting Organization) Council invokes the GNSO (Generic Names Supporting Organization) Expedited Policy Development Process ("**EPDP**"). The GNSO (Generic Names Supporting Organization) Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO (Generic Names Supporting Organization) policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP (Policy Development Process) that was not initiated; (b) as part of a previous PDP (Policy Development Process) that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP (Policy Development Process) Manual (see Annex 2 of the GNSO (Generic Names Supporting Organization) Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus (Consensus) Policy; however, in all cases where the GNSO (Generic Names Supporting Organization) is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO (Generic Names Supporting Organization) Expedited Policy Development Process**

The following elements are required at a minimum to develop expedited GNSO (Generic Names Supporting Organization) policy recommendations, including recommendations that could result in amendments to an existing Consensus (Consensus) Policy, as part of a GNSO (Generic Names Supporting Organization) Expedited Policy Development Process:

a. Formal initiation of the GNSO (Generic Names Supporting Organization) Expedited Policy Development Process by the GNSO (Generic Names Supporting Organization) Council, including an EPDP scoping document;

b. Formation of an EPDP Team or other designated work method;

c. Initial Report produced by an EPDP Team or other designated work method;

d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;

e. GNSO (Generic Names Supporting Organization) Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;

f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and

g. Board approval of EPDP Recommendation(s).

Section 2. **Expedited Policy Development Process Manual**

The GNSO (Generic Names Supporting Organization) shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO (Generic Names Supporting Organization) Policy Development Process Manual (PDP (Policy Development Process) Manual), described in Annex 5 of the GNSO (Generic Names Supporting Organization) Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The E PDP (Policy Development Process) Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d) .

Section 3. **Initiation of the EPDP**

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in Section 11.3(i)(xii) of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG (Stakeholder Group) / C;

2. Origin of issue (e.g. previously completed PDP (Policy Development Process));

3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);

4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO (Generic Names Supporting Organization) policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO (Generic Names Supporting Organization) policy issue that had been scoped previously as part of a PDP (Policy Development Process) that was not completed or other similar effort, including relevant supporting information in either case;

5. If not provided as part of item 4, the opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel as to whether the issue proposed for consideration is properly within the scope of the Mission, policy process and more specifically the role of the GNSO (Generic Names Supporting Organization);

6. Proposed EPDP mechanism (e.g. WG (Working Group), DT (Drafting Team), individual volunteers);

7. Method of operation, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines;

8. Decision-making methodology for EPDP mechanism, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines;

9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP (Policy Development Process) Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP (Policy Development Process) Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendation(s) Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any EPDP Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). If the GNSO (Generic Names Supporting Organization) Council recommendation was approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and co mmunicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers). For any Supplemental Recommendation approved by less than a GNSO (Generic Names Supporting Organization) Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to work with the GNSO (Generic Names Supporting Organization) Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the EPDP, from initiation to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO (Generic Names Supporting Organization) Guidance Process

The following process shall govern the GNSO (Generic Names Supporting Organization) guidance process ("**GGP**") until such time as modifications are recommended to and approved by the Board . The role of the GNSO (Generic Names Supporting Organization) is outlined in Article 11 of these Bylaws. If the GNSO (Generic Names Supporting Organization) is conducting activities that are intended to result in a Consensus (Consensus) Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. **Required Elements of a GNSO (Generic Names Supporting Organization) Guidance Process**

The following elements are required at a minimum to develop GNSO (Generic Names Supporting Organization) guidance:

1. Formal initiation of the GNSO (Generic Names Supporting Organization) Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO (Generic Names Supporting Organization) Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO (Generic Names Supporting Organization) Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. **GNSO (Generic Names Supporting Organization) Guidance Process Manual**

The GNSO (Generic Names Supporting Organization) shall maintain a GNSO (Generic Names Supporting Organization) Guidance Process (GGP Manual) within the operating procedures of the GNSO (Generic Names Supporting Organization) maintained by the GNSO (Generic Names Supporting Organization) Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Initiation of the GGP**

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN (Internet Corporation for Assigned Names and Numbers) Board. Initiation of a GGP requires a vote as set forth in Section 11.3(i)(xvi) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the GNSO (Generic Names Supporting Organization) Council votes against the initiation of a GGP as set forth in Section 11.3(i)(xvii).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG (Stakeholder Group) / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG (Working Group), DT (Drafting Team), individual volunteers)
5. Method of operation, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines

6. Decision-making methodology for GGP mechanism, if different from GNSO (Generic Names Supporting Organization) Working Group Guidelines

7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO (Generic Names Supporting Organization) Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO (Generic Names Supporting Organization) Council, a Recommendations Report shall be approved by the GNSO (Generic Names Supporting Organization) Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO (Generic Names Supporting Organization) Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

a. Any GGP Recommendations approved by a GNSO (Generic Names Supporting Organization) Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO (Generic Names Supporting Organization) Guidance recommendation(s) adopted by a GNSO (Generic Names Supporting Organization) Supermajority Vote is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers) (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO (Generic Names Supporting Organization) Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the

ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

Section 7. **Implementation of Approved GNSO (Generic Names Supporting Organization) Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the GNSO (Generic Names Supporting Organization) Guidance. If deemed necessary, the Board may direct ICANN (Internet Corporation for Assigned Names and Numbers) Staff to work with the GNSO (Generic Names Supporting Organization) Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, ICANN (Internet Corporation for Assigned Names and Numbers) will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN (Internet Corporation for Assigned Names and Numbers) on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN (Internet Corporation for Assigned Names and Numbers) staff person(s) who manages the GGP.

Annex B: ccNSO (Country Code Names Supporting Organization) Policy-Development Process (ccPDP)

The following process shall govern the ccNSO (Country Code Names Supporting Organization) policy-development process ("**PDP (Policy Development Process)**").

1. Request for an Issue Report

An Issue Report may be requested by any of the following:

a. *Council.* The ccNSO (Country Code Names Supporting Organization) Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by documentation of support from at least seven of the members of the Council present at any meeting or voting by electronic means.

b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.

c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN (Internet Corporation for Assigned Names and Numbers) recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

d. *ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee).* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization (Supporting Organization) or an ICANN (Internet Corporation for Assigned Names and Numbers) Advisory

Committee (Advisory Committee) may call for creation of an Issue Report by requesting the Council to begin the policy-development process.

e. *Members of the ccNSO (Country Code Names Supporting Organization).* At least ten members of the ccNSO (Country Code Names Supporting Organization) from at least ten different Territories may call for the creation of an Issue Report at any meeting or by electronic means.

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation.

2. Creation of the Issue Report and Initiation Threshold

Within fourteen (14) days after the receipt of a request as outlined in Item 1 above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (Internet Corporation for Assigned Names and Numbers) (in which case the costs of the Issue Manager shall be borne by ICANN (Internet Corporation for Assigned Names and Numbers)) or such other person or persons selected by the Council (in which case the ccNSO (Country Code Names Supporting Organization) shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

a. The proposed issue raised for consideration;

b. The identity of the party submitting the issue;

c. How that party is affected by the issue;

d. Support for the issue to initiate the PDP (Policy Development Process);

e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP (Policy Development Process) for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN (Internet Corporation for Assigned Names and Numbers) General Counsel regarding whether the issue is properly within the scope of the ICANN (Internet Corporation for Assigned Names and Numbers) policy process and within the scope of the ccNSO (Country Code Names Supporting Organization). In coming to his or her opinion, the General Counsel shall examine whether:
1) The issue is within the scope of the Mission;

2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO (Country Code Names Supporting Organization);

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

3) Implicates or affects an existing ICANN (Internet Corporation for Assigned Names and Numbers) policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Country Code Names Supporting Organization) (Annex C) shall be within the scope of ICANN

(Internet Corporation for Assigned Names and Numbers) and the ccNSO (Country Code Names Supporting Organization).

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO (Country Code Names Supporting Organization) Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO (Country Code Names Supporting Organization) shall inform the Issue Manager accordingly. General Counsel and the ccNSO (Country Code Names Supporting Organization) Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO (Country Code Names Supporting Organization) then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO (Country Code Names Supporting Organization) shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP (Policy Development Process) including both the opinion and analysis of General Counsel and Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP (Policy Development Process), a proposed time line for conducting each of the stages of PDP (Policy Development Process) outlined herein ("**PDP (Policy Development Process) Time Line**").

g. g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP (Policy Development Process).

3. Initiation of PDP (Policy Development Process)

The Council shall decide whether to initiate the PDP (Policy Development Process) as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP (Policy Development Process). Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur electronic means.

b. A vote of ten or more Council members in favor of initiating the PDP (Policy Development Process) shall be required to initiate the PDP (Policy Development Process) provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO (Country Code Names Supporting Organization) Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP (Policy Development Process) has been initiated (or, where the Council employs a vote by electronic means, in that vote) pursuant to Item 3 above, the Council shall decide, by a majority vote of members present at the meeting (or voting by electronic means), whether or not to appoint a task force to address the issue. If the Council votes:

a. In favor of convening a task force, it shall do so in accordance with Item 7 below.

b. Against convening a task force, then it shall collect information on the policy issue in accordance with Item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by electronic means, approve or amend and approve the PDP (Policy Development Process) Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO (Country Code Names Supporting Organization) and, following formal request for GAC (Governmental Advisory Committee) participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee (Advisory Committee) to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.

b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

c. The Council may also pursue other actions that it deems appropriate to assist in the PDP (Policy Development Process), including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP (Policy Development Process) Time Line.

6. Public Notification of Initiation of the PDP (Policy Development Process) and Comment Period

After initiation of the PDP (Policy Development Process), ICANN (Internet Corporation for Assigned Names and Numbers) shall post a notification of such action to the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. The Issue Manager, or some other designated Council representative shall review the comments and incorporate them into a report (the "**Comment Report**") to be included in either the Preliminary Task Force Report or the Initial Report, as applicable.

7. Task Forces

a. *Role of Task Force.* If a task force is created, its role shall be responsible for (i) gathering information documenting the positions of the ccNSO (Country Code Names Supporting Organization) members within the Geographic Regions and other parties and groups; and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.

b. *Task Force Charter or Terms of Reference.* The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "**Charter**") within the time designated in the PDP (Policy Development Process) Time Line. Such Charter shall include:

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP (Policy Development Process);
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by electronic means. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

c. *Appointment of Task Force Chair.* The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP (Policy Development Process) Time Line. At the initial meeting, the task force members shall, among other things, vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force, including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. *Collection of Information*.

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO (Country Code Names Supporting Organization) members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP (Policy Development Process) Time Line. Every Regional Statement shall include at least the following:

(i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;

(ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;

(iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;

(iv) A statement of the position on the issue of any ccNSO (Country Code Names Supporting Organization) members that are not members of the Regional Organization;

(v) An analysis of how the issue would affect the Region, including any financial impact on the Region; and

(vi) An analysis of the period of time that would likely be necessary to implement the policy.

2. Outside Advisors. The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP (Policy Development Process) Time Line.

e. *Task Force Report.* The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports, as applicable, into a single document ("**Preliminary Task Force Report**") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP (Policy Development Process) Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting, the chair of the task force and the Issue Manager shall create the final task force report (the "**Task Force Report**") and post it on the Website and to the other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees). Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;
2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;
3. An analysis of how the issue would affect each Region, including any financial impact on the Region;
4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP (Policy Development Process) Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

b. The Council may, in its discretion, take other steps to assist in the PDP (Policy Development Process), including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP (Policy Development Process) Time Line.

c. The Council shall formally request the Chair of the GAC (Governmental Advisory Committee) to offer opinion or advice.

d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP (Policy Development Process) Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

a. A comment period (in accordance with the PDP (Policy Development Process) Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD (Country Code Top Level Domain) managers, other Supporting Organizations (Supporting Organizations), Advisory Committees (Advisory Committees), and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.

b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.

c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP (Policy Development Process) Time Line.

10. Council Deliberation

a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP (Policy Development Process) Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC (Governmental Advisory Committee) Chair an invitation to the GAC (Governmental Advisory Committee) to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.

b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.

c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "**Council Recommendation**"), the Council shall seek to act by consensus. If a minority opposes a consensus position, that minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council, and shall be conveyed to the Members as the Council's Recommendation. Notwithstanding the foregoing, as outlined below, all viewpoints expressed by Council members during the PDP (Policy Development Process) must be included in the Members Report.

12. Council Report to the Members

In the event that a Council Recommendation is adopted pursuant to Item 11 then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council

and then to be submitted to the Members (the "**Members Report**"). The Members Report must contain at least the following:

a. A clear statement of the Council's recommendation;

b. The Final Report submitted to the Council; and

c. A copy of the minutes of the Council's deliberation on the policy issue (see Item 10), including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP (Policy Development Process) Time Line, the ccNSO (Country Code Names Supporting Organization) members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and lodged through their designated Emissaries. The members' votes shall be lodged over such a period of time as designated in the PDP (Policy Development Process) Time Line (at least 21 days long).

In the event that at least 50% of the Emissaries lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO (Country Code Names Supporting Organization) members lodge votes in the first round of voting, the first round will not be employed and the results of a final, second round of voting, conducted after at least thirty days notice to the ccNSO (Country Code Names Supporting Organization) members, will be employed irrespective of whether at least 50% of the Emissaries lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO (Country Code Names Supporting Organization) Recommendation.

14. Board Report

The Issue Manager shall within seven days after a ccNSO (Country Code Names Supporting Organization) Recommendation being made in accordance with Item 13 incorporate the ccNSO (Country Code Names Supporting Organization) Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "**Board Report**"). The Board Report must contain at least the following:

a. A clear statement of the ccNSO (Country Code Names Supporting Organization) recommendation;

b. The Final Report submitted to the Council; and

c. the Members' Report.

15. Board Vote

a. The Board shall meet to discuss the ccNSO (Country Code Names Supporting Organization) Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.

b. The Board shall adopt the ccNSO (Country Code Names Supporting Organization) Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN (Internet Corporation for Assigned Names and Numbers) community or of ICANN (Internet Corporation for Assigned Names and Numbers).

1. In the event that the Board determines not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO (Country Code Names Supporting Organization) Recommendation in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.

2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "**Supplemental Recommendation**"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13 . In the event that more than 66% of the votes cast by ccNSO (Country Code Names Supporting Organization) Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.

4. In the event that the Board does not accept the ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("**Supplemental Board Statement**").

5. In the event the Board determines not to accept a ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO (Country Code Names Supporting Organization) shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO (Country Code Names Supporting Organization) Recommendation or ccNSO (Country Code Names Supporting Organization) Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN (Internet Corporation for Assigned Names and Numbers) staff to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see Item 1), ICANN (Internet Corporation for Assigned Names and Numbers) shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

a. Issue Report;

b. PDP (Policy Development Process) Time Line;

c. Comment Report;

d. Regional Statement(s);

e. Preliminary Task Force Report;

f. Task Force Report;

g. Initial Report;

h. Final Report;

i. Members' Report;

j. Board Report;

k. Board Statement;

l. Supplemental Members' Report; and

m. Supplemental Board Statement.

In addition, ICANN (Internet Corporation for Assigned Names and Numbers) shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO (Country Code Names Supporting Organization)

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO (Country Code Names Supporting Organization)'s policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO (Country Code Names Supporting Organization)'s authority and responsibilities must recognize the complex relation between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers/registries with regard to policy issues. This annex shall assist the ccNSO (Country Code Names Supporting Organization), the ccNSO (Country Code Names Supporting Organization) Council, and the Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO (Country Code Names Supporting Organization)'s policy role should be based on an analysis of the following functional model of the DNS (Domain Name System):

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD (Top Level Domain) name servers.

Within a **TLD (Top Level Domain)** two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database ("**Data Entry Function**") and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Top Level Domain) ("**Name Server Function**").

These two core functions must be performed at the ccTLD (Country Code Top Level Domain) registry level as well as at a higher level (IANA (Internet Assigned Numbers Authority) function and root servers)

and at lower levels of the DNS (Domain Name System) hierarchy. This mechanism, as RFC (Request for Comments) 1591 points out, is recursive:

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees fit (as long as it is true and correct).

The Core Functions

1. Data Entry Function (DEF):

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions:

a. under which data will be collected and entered into a database or data changed (at the TLD (Top Level Domain) level among others, data to reflect a transfer from registrant to registrant or changing registrar) in the database.

b. for making certain data generally and publicly available (be it, for example, through Whois or nameservers).

2. The Name-Server Function (NSF (National Science Foundation (USA)))

The name-server function involves essential interoperability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD (Country Code Top Level Domain) level, but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of interoperability and stability considerations, properly functioning nameservers are of utmost importance to the individual, as well as to the local and the global Internet communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD (Country Code Top Level Domain) registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC (Request for Comments) 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) managers to ensure the stable and proper functioning of the domain name system. ICANN (Internet Corporation for Assigned Names and Numbers) and the ccTLD (Country Code Top Level Domain) registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO (Country Code Names Supporting Organization) cannot be established without reaching a common understanding of the allocation of authority between ICANN (Internet Corporation for Assigned Names and Numbers) and ccTLD (Country Code Top Level Domain) registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy;
- Executive role: i.e. the ability and power to act upon and implement the policy; and

- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power.

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue that needs to be addressed those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to defined and determined.

The information below offers an aid to:

1. delineate and identify specific policy areas;

2. define and determine roles with regard to these specific policy areas.

This annex defines the scope of the ccNSO (Country Code Names Supporting Organization) with regard to developing policies. The scope is limited to the policy role of the ccNSO (Country Code Names Supporting Organization) policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers
Policy role: IETF (Internet Engineering Task Force), RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: Root Server System Operators
Accountability role: RSSAC (Root Server System Advisory Committee) (ICANN (Internet Corporation for Assigned Names and Numbers))

Level 2: ccTLD (Country Code Top Level Domain) Registry Name Servers in respect to interoperability
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers)), for best practices a ccNSO (Country Code Names Supporting Organization) process can be organized
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: part ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority)), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD (Country Code Top Level Domain) Manager, IETF (Internet Engineering Task Force) (RFC (Request for Comments))
Executive role: Registrant (Registrant)
Accountability role: ccTLD (Country Code Top Level Domain) Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO (Country Code Names Supporting Organization) Policy Development Process (ICANN (Internet Corporation for Assigned Names and Numbers))
Executive role: ICANN (Internet Corporation for Assigned Names and Numbers) (IANA (Internet Assigned Numbers Authority))
Accountability role: ICANN (Internet Corporation for Assigned Names and Numbers) community, ccTLD (Country Code Top Level Domain) Managers, (national authorities in some cases)

Level 2: ccTLD (Country Code Top Level Domain) Registry
Policy role: Local Internet Community, including local government, and/or ccTLD (Country Code Top Level Domain) Manager according to local structure
Executive role: ccTLD (Country Code Top Level Domain) Manager
Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels
Policy role: Registrant (Registrant)
Executive role: Registrant (Registrant)
Accountability role: Registrant (Registrant), users of lower-level domain names

ANNEX D: EC (Empowered Community) MECHANISM

ARTICLE 1 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO APPROVE APPROVAL ACTIONS

Section 1.1. APPROVAL ACTIONS

The processes set forth in this Article 1 shall govern the escalation procedures for the EC (Empowered Community)'s exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;

b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws; and

c. Asset Sales, as contemplated by Article 26 of the Bylaws.

Section 1.2. APPROVAL PROCESS

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC (Empowered Community) Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP (Policy Development Process), citing the specific PDP (Policy Development Process) and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that implements such PDP (Policy Development Process) (as applicable, a "**PDP (Policy Development Process) Fundamental Bylaw Statement**" or "**PDP (Policy Development Process) Articles Statement**") and the name of the Supporting Organization (Supporting Organization) that is a Decisional Participant that undertook the PDP (Policy Development Process) relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant**" or "**Articles Amendment PDP (Policy Development Process) Decisional Participant**"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the "**Approval Process**."

Section 1.3. APPROVAL ACTION COMMUNITY FORUM

a. ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an "**Approval Action Community Forum**").

b. If the EC (Empowered Community) Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the Approval Action Board Notification Date ("**Approval Action Community Forum Period**"). If the EC (Empowered Community) Administration requests that the Approval Action Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the Approval Action Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the EC (Empowered Community) Administration. If the Approval Action Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Approval Action Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

e. The EC (Empowered Community) Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.

f. ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

g. ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.

h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.

i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC (Empowered Community) Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

j. ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Approval Action Community Forum.

Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver a written notice ("**EC (Empowered Community) Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC (Empowered Community) has approved the Approval Action if:

> (i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;
>
> (ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant if the Board Notice included a PDP (Policy Development Process) Fundamental Bylaw Statement) and (B) not objected to by more than one Decisional Participant; or
>
> (iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP (Policy Development Process) Decisional Participant if the Board Notice included a PDP (Policy Development Process) Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Approval Action

Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC (Empowered Community) Approval Notice, (iii) Approval Process Termination Notice, (iv) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC (Empowered Community)'s exercise of its right to reject the following (each, a "**Rejection Action**") under the Bylaws:

a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;

b. IFR Recommendation Decisions, as contemplated by Section 18.6(d) of the Bylaws;

c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;

d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;

e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;

f. ICANN (Internet Corporation for Assigned Names and Numbers) Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;

g. IANA (Internet Assigned Numbers Authority) Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;

h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;

i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and

j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC (Empowered Community) Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

(i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, an IANA (Internet Assigned Numbers Authority) Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC (Empowered Community) Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN (Internet Corporation for Assigned Names and Numbers)'s stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP (Policy Development Process), citing the specific PDP (Policy Development Process) and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP (Policy Development Process) ("**PDP (Policy Development Process) Standard Bylaw Statement**") and the name of the Supporting Organization (Supporting Organization) that is a Decisional Participant that undertook the PDP (Policy Development Process) relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection Action Petition Period, the Rejection Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC (Empowered Community) Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection Action Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Rejection Action Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

(C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP (Policy Development Process) Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a PDP (Policy Development Process) Standard Bylaw Statement, the Standard Bylaw Amendment PDP (Policy Development Process)

Decisional Participant is not (x) the Rejection Action Petitioning Decisional Participant or (y) one of the Rejection Action Supporting Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

a. If the EC (Empowered Community) Administration receives a Rejection Action Supported Petition under Section 2.2(d) of this Annex D during the Rejection Action Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC (Empowered Community) Administration receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.

b. If a publicly-available conference call has been requested in a Rejection Action Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.

c. The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget) on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget or IANA (Internet Assigned Numbers Authority) Budget may only be held at a scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period, without any extension of such Rejection Action Community Forum Period.

d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Rejection Action Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

e. The EC (Empowered Community) Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.

f. ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

g. ICANN (Internet Corporation for Assigned Names and Numbers) staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN (Internet Corporation for Assigned Names and Numbers) Budget, IANA (Internet Assigned Numbers Authority) Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.

h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant(s).

i. During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC (Empowered Community) Administration.

j. ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Rejection Action Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC (Empowered Community) Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC (Empowered Community) Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC (Empowered Community) has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC (Governmental Advisory Committee) Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC (Governmental Advisory Committee) Consensus (Consensus) Statement):

> (i) A Rejection Action Supported Petition relating to a Rejection Action other than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or
>
> (ii) A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that is (A) supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant if the Rejection Action Supported Petition included a PDP (Policy Development Process) Standard Bylaw Statement) and (B) not objected to by more than one Decisional Participant.

(c) If no Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i) or (ii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.

(d) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Rejection Action Board Notice, (ii) Rejection Action Petition, (iii) Rejection Action Petition Notice, (iv) Rejection Action Supported Petition, (v) EC (Empowered Community) Rejection Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to reject the Rejection Action, (vi) Rejection Process Termination Notice, and (vii) other notices the Secretary receives under this Article 2.

ARTICLE 3 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO REMOVE DIRECTORS AND RECALL THE BOARD

Section 3.1. NOMINATING COMMITTEE DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove a Director holding Seats 1 through 8 and initiate the Nominating Committee Director Removal Process ("**Nominating Committee Director Removal Petition**"). Each Nominating Committee Director Removal Petition shall set forth the rationale upon which such individual seeks to remove such Director. The process set forth in this Section 3.1 of Annex D is referred to herein as the "**Nominating Committee Director Removal Process**."

(b) During the period beginning on the date that the Decisional Participant received the Nominating Committee Director Removal Petition (such date of receipt, the "**Nominating Committee Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Nominating Committee Director Removal Petition Date (as it relates to a particular Director, the "**Nominating Committee Director Removal Petition Period**"), the Decisional Participant that has received a Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Petitioned Decisional Participant**") shall either accept or reject such Nominating Committee Director Removal Petition; provided that a Nominating Committee Director Removal Petitioned Decisional Participant shall not accept a Nominating Committee Director Removal Petition if, during the same term, the Director who is the subject of such Nominating Committee Director Removal Petition had previously been subject to a Nominating Committee Director Removal Petition that led to a Nominating Committee Director Removal Community Forum (as discussed in Section 3.1(e) of this Annex D).

(c) During the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Petitioned Decisional Participant shall invite the Director subject to the Nominating Committee Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the Nominating Committee Director Removal Petition and the Nominating Committee Director Removal Petitioned Decisional Participant's representative on the EC (Empowered Community) Administration. The Nominating Committee Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the Nominating Committee Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Nominating Committee Director Removal Petitioned Decisional Participant shall not accept the Nominating Committee Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.1(b) of this Annex D, a Nominating Committee Director Removal Petitioned Decisional Participant accepts a Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Period (such Decisional Participant, the "**Nominating Committee Director Removal Petitioning Decisional Participant**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall, within twenty-four (24) hours of its acceptance of the Nominating Committee Director Removal Petition, provide written notice ("**Nominating Committee Director Removal Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. The Nominating Committee Director Removal Petition Notice shall include the rationale upon which removal of the affected Director is sought. The Nominating Committee Director Removal Process shall thereafter continue pursuant to Section 3.1(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Nominating Committee Director Removal Petition Notice pursuant to Section 3.1(c)(i) of this Annex D during the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Process shall automatically be terminated with respect to the applicable Nominating Committee Director Removal Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal

Petition Period, deliver to the Secretary a notice certifying that the Nominating Committee Director Removal Process has been terminated with respect to the applicable Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Process Termination Notice**").

(d) Following the delivery of a Nominating Committee Director Removal Petition Notice to the EC (Empowered Community) Administration by a Nominating Committee Director Removal Petitioning Decisional Participant pursuant to Section 3.1(c)(i) of this Annex D, the Nominating Committee Director Removal Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Nominating Committee Director Removal Petition. The Nominating Committee Director Removal Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Nominating Committee Director Removal Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Nominating Committee Director Removal Supporting Decisional Participant**") during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Nominating Committee Director Removal Petition Period (the "**Nominating Committee Director Removal Petition Support Period**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Nominating Committee Director Removal Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Nominating Committee Director Removal Supporting Decisional Participant. Each Nominating Committee Director Removal Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Nominating Committee Director Removal Petition. Such Nominating Committee Director Removal Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Nominating Committee Director Removal Petitioning Decisional Participant who shall act as a liaison with respect to the Nominating Committee Director Removal Supported Petition;

(C) a statement as to whether or not the Nominating Committee Director Removal Petitioning Decisional Participant and/or the Nominating Committee Director Removal Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Nominating Committee Director Removal Community Forum (as defined in Section 3.1(e) of this Annex D) for the community to discuss the Nominating Committee Director Removal Supported Petition; and

(D) a statement as to whether the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant have determined to hold the Nominating Committee Director Removal Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Nominating Committee Director Removal Process shall thereafter continue for such Nominating Committee Director Removal Petition pursuant to Section 3.1(e) of this Annex D.

(ii) The Nominating Committee Director Removal Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Support Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice if the Nominating Committee Director Removal Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Support Period.

(e) If the EC (Empowered Community) Administration receives a Nominating Committee Director Removal Supported Petition under Section 3.1(d) of this Annex D during the Nominating Committee Director Removal Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Nominating Committee Director Removal Supported Petition ("**Nominating Committee Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in a Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Nominating Committee Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability.

(ii) The Nominating Committee Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period ("**Nominating Committee Director Removal Community Forum Period**") unless the Nominating Committee Director Removal Supported Petition requested that the Nominating Committee Director Removal Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Nominating Committee Director Removal Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s); provided, that, the date and time of any Nominating Committee Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability. If the Nominating Committee Director Removal Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period, the Nominating Committee Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Nominating Committee Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the Nominating Committee Director Removal Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Nominating Committee Director Removal Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the Nominating Committee Director Removal Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Nominating Committee Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Nominating Committee Director Removal Petitioning Decisional Participant or the Nominating Committee Director Removal Supporting Decisional Participant, nor the individual who initiated the Nominating Committee Director Removal Petition, shall be permitted to participate in the management or moderation of the Nominating Committee Director Removal Community Forum.

(v) The Director subject to the Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Nominating Committee Director Removal Supported Petition prior to the convening of and during the Nominating Committee Director Removal Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) The Director who is the subject of the Nominating Committee Director Removal Supported Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the Nominating Committee Director Removal Community Forum in order to address the issues raised in the Nominating Committee Director Removal Supported Petition.

(vii) If the Nominating Committee Director Removal Petitioning Decisional Participant and each of the Nominating Committee Director Removal Supporting Decisional Participants for an applicable Nominating Committee Director Removal Supported Petition agree before, during or after the Nominating Committee Director Removal Community Forum that the issue raised in such Nominating Committee Director Removal Supported Petition has been resolved, such Nominating Committee Director Removal Supported Petition shall be deemed withdrawn and the Nominating Committee Director Removal Process with respect to such Nominating Committee Director Removal Supported Petition will be terminated. If a Nominating Committee Director Removal Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Nominating Committee Director Removal Supported Petition, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. For the avoidance of doubt, the Nominating Committee Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s).

(viii) During the Nominating Committee Director Removal Community Forum Period, an additional one or two Nominating Committee Director Removal Community Forums may be held at the discretion of a Nominating Committee Director Removal Petitioning Decisional Participant and a related Nominating Committee Director Removal Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Nominating Committee Director Removal Community Forum and shall promptly post on the Website a public record of the Nominating Committee Director Removal Community Forum as well as all written submissions of the Director who is the subject of the Nominating Committee Director Removal Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Nominating Committee Director Removal Community Forum.

(f) Following the expiration of the Nominating Committee Director Removal Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period (such period, the "**Nominating Committee Director Removal Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Nominating Committee Director Removal Supported Petition, (ii) objects to such Nominating Committee Director Removal Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Nominating Committee Director Removal Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Nominating Committee Director Removal Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Nominating Committee Director Removal Decision Period).

(g) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver a written notice ("**Nominating Committee Director Removal Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of Section 3.1 of this Annex D, the EC (Empowered Community) has approved of the removal of the Director who is subject to the Nominating Committee Director Removal Process if the Nominating Committee Director Removal Supported Petition is (i) supported by three or more Decisional Participants and (ii) not objected to by more than one Decisional Participant.

(h) Upon the Secretary's receipt of a Nominating Committee Director Removal Notice, the Director subject to such Nominating Committee Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(i) If the Nominating Committee Director Removal Supported Petition does not obtain the support required by Section 3.1(g) of this Annex D, the Nominating Committee Director Removal Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. The Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(j) If neither a Nominating Committee Director Removal Notice nor a Nominating Committee Director Removal Process Termination Notice are received by the Secretary prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period, the Nominating Committee Director Removal Process shall automatically terminate and the Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and shall not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(k) Notwithstanding anything in this Section 3.1 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of a Nominating Committee Director Removal Process ceases to be a Director, the Nominating Committee Director Removal Process for such Director shall automatically terminate without any further action of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community) Administration.

(l) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Nominating Committee Director Removal Petition, (ii) Nominating Committee Director Removal Petition Notice, (iii) Nominating Committee Director Removal Supported Petition, (iv) Nominating Committee Director Removal Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to remove the relevant Director, (v) Nominating Committee Director Removal Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.1.

Section 3.2. SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to the ASO (Address Supporting Organization), ccNSO (Country Code Names Supporting Organization), GNSO (Generic Names Supporting Organization) or At-Large Community (as applicable, the "**Applicable Decisional Participant**") seeking to remove a Director who was nominated by that Supporting Organization (Supporting Organization) or the At-Large Community in accordance with Section 7.2(a) of the Bylaws, and initiate the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition**"). The process set forth in this Section 3.2 of this Annex D is referred to herein as the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process**."

(b) During the period beginning on the date that the Applicable Decisional Participant received the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition (such date of receipt, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Date (as it relates to a particular Director, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period**"), the Applicable Decisional Participant shall either accept or reject such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition pursuant to the internal procedures of the Applicable Decisional Participant for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition; provided that the Applicable Decisional Participant shall not accept an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition if, during the same term, the Director who is the subject

of such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition had previously been subject to an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition that led to an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D).

(c) During the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the Applicable Decisional Participant shall invite the Director subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the Applicable Decisional Participant's representative on the EC (Empowered Community) Administration. The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Applicable Decisional Participant shall not accept the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.2(b), the Applicable Decisional Participant accepts an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the Applicable Decisional Participant shall, within twenty-four (24) hours of the Applicable Decisional Participant's acceptance of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, provide written notice ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. Such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Applicable Decisional Participant who shall act as a liaison with respect to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice;

(C) a statement as to whether or not the Applicable Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D) for the community to discuss the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition; and

(D) a statement as to whether the Applicable Decisional Participant has determined to hold the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain

registration)) Director Removal Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall thereafter continue for such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition pursuant to Section 3.2(d) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice pursuant to Section 3.2(c)(i) during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall automatically be terminated with respect to the applicable SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, deliver to the Secretary a notice certifying that the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process has been terminated with respect to the applicable SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice**").

(d) If the EC (Empowered Community) Administration receives an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice under Section 3.2(c) of this Annex D during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice regarding his or her availability.

(ii) The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period

and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period**") unless the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice requested that the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Applicable Decisional Participant; provided, that the date and time of any SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice regarding his or her availability. If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects, and/or, only if the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Applicable Decisional Participant, nor the individual who initiated the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, shall be permitted to participate in the management or

moderation of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum.

(v) The Director subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice prior to the convening of and during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) The Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum in order to address the issues raised in the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice.

(vii) If the Applicable Decisional Participant agrees before, during or after the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum that the issue raised in such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice has been resolved, such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice shall be deemed withdrawn and the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process with respect to such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice will be terminated. If an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, deliver to the Secretary an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice. For the avoidance of doubt, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Applicable Decisional Participant.

(viii) During the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period, an additional one or two SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forums may be held at the discretion of the Applicable Decisional Participant or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum and shall promptly post on the Website

> a public record of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum as well as all written submissions of the Director who is the subject of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum.

(e) Following the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Community Forum Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the request of the EC (Empowered Community) Administration, issue a request for comments and recommendations from the community, which shall be delivered to the Secretary for prompt posting on the Website along with a means for comments and recommendations to be submitted to ICANN (Internet Corporation for Assigned Names and Numbers) on behalf of the EC (Empowered Community) Administration. This comment period shall remain open until 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the request for comments and recommendations was posted on the Website (the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website all comments and recommendations received by ICANN (Internet Corporation for Assigned Names and Numbers) during the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period.

(f) Following the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Comment Period (such period, the "**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Decision Period**"), the Applicable Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether the Applicable Decisional Participant has support for the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice within the Applicable Decisional Participant of a three-quarters majority as determined pursuant to the internal procedures of the Applicable Decisional Participant ("**SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice**"). The Applicable Decisional Participant shall, within twenty-four (24) hours of obtaining such support, deliver the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice to the EC (Empowered Community) Administration, the other Decisional Participants and Secretary, and ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the Applicable Decisional Participant, concurrently post on the Website an explanation provided by the Applicable Decisional Participant as to why the Applicable Decisional Participant has chosen to remove the affected Director. Upon the Secretary's receipt of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice from the EC (Empowered Community) Administration, the Director subject to such SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(g) If the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice does not obtain the support required by Section 3.2(f) of this Annex D, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the failure to obtain such support, deliver to the Secretary an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice. The Director who was subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall remain on the Board and shall not be subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for the remainder of the Director's current term.

(h) If neither an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice nor an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice are received by the Secretary prior to the expiration of the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Decision Period, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall automatically terminate and the Director who was subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process shall remain on the Board and shall not be subject to the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for the remainder of the Director's current term.

(i) Notwithstanding anything in this Section 3.2 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process ceases to be a Director, the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process for such Director shall automatically terminate without any further action of ICANN (Internet Corporation for Assigned Names and Numbers) or the EC (Empowered Community) Administration.

(j) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition, (ii) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Petition Notice, (iii) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to remove the relevant Director, (iv) SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Process Termination Notice, and (v) other notices the Secretary receives under this Section 3.2.

Section 3.3. BOARD RECALL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("**Board Recall Petition**"), provided that a Board Recall Petition cannot be submitted solely on the basis of a matter decided by a Community IRP if (i) such Community IRP was initiated in connection with the Board's implementation of GAC (Governmental Advisory Committee) Consensus (Consensus) Advice and (ii) the EC (Empowered Community) did not prevail in such Community IRP. Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board. The process set forth in this Section 3.3 of this Annex D is referred to herein as the "**Board Recall Process**."

(b) A Decisional Participant that has received a Board Recall Petition shall either accept or reject such Board Recall Petition during the period beginning on the date the Decisional Participant received the Board Recall Petition ("**Board Recall Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the date that is the 21st day after the Board Recall Petition Date (the "**Board Recall Petition Period**").

(i) If, in accordance with Section 3.3(b) of this Annex D, a Decisional Participant accepts a Board Recall Petition during the Board Recall Petition Period (such Decisional Participant, the "**Board Recall Petitioning Decisional Participant**"), the Board Recall Petitioning Decisional Participant shall, within twenty-four (24) hours of the expiration of its acceptance of the Board Recall Petition, provide written notice ("**Board Recall Petition Notice**") of such acceptance to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary. The Board Recall Petition Notice shall include the rationale upon which removal of the Board is sought. The Board Recall Process shall thereafter continue pursuant to Section 3.3(c) of this Annex D.

(ii) If the EC (Empowered Community) Administration has not received a Board Recall Petition Notice pursuant to Section 3.3(b)(i) of this Annex D during the Board Recall Petition Period, the Board Recall Process shall automatically be terminated with respect to the Board Recall Petition and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Period, deliver to the Secretary a notice certifying that the Board Recall Process has been terminated with respect to the Board Recall Petition ("**Board Recall Process Termination Notice**").

(c) Following the delivery of a Board Recall Petition Notice to the EC (Empowered Community) Administration by a Board Recall Petitioning Decisional Participant pursuant to Section 3.3(b)(i) of this Annex D, the Board Recall Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Board Recall Petition. The Board Recall Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

(i) If the Board Recall Petitioning Decisional Participant obtains the support of at least two other Decisional Participants (each, a "**Board Recall Supporting Decisional Participant**") during the period beginning upon the expiration of the Board Recall Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 7th day after the expiration of the Board Recall Petition Period (the "**Board Recall Petition Support Period**"), the Board Recall Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Board Recall Supported Petition**") within twenty-four hours of receiving the support of at least two Board Recall Supporting Decisional Participants. Each Board Recall Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Board Recall Petition. Such Board Recall Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Board Recall Petitioning Decisional Participant who shall act as a liaison with respect to the Board Recall Supported Petition;

(C) a statement as to whether or not the Board Recall Petitioning Decisional Participant and/or the Board Recall Supporting Decisional Participants requests that ICANN (Internet Corporation for

Assigned Names and Numbers) organize a publicly-available conference call prior to the Board Recall Community Forum (as defined in Section 3.3(d) of this Annex D) for the community to discuss the Board Recall Supported Petition; and

(D) a statement as to whether the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants have determined to hold the Board Recall Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Board Recall Process shall thereafter continue for such Board Recall Supported Petition pursuant to Section 3.3(d) of this Annex D.

(ii) The Board Recall Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Support Period, deliver to the Secretary a Board Recall Process Termination Notice if the Board Recall Petitioning Decisional Participant is unable to obtain the support of at least two other Decisional Participants for its Board Recall Petition during the Board Recall Petition Support Period.

(d) If the EC (Empowered Community) Administration receives a Board Recall Supported Petition under Section 3.3(c) of this Annex D during the Board Recall Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Board Recall Supported Petition ("**Board Recall Community Forum**").

(i) If a publicly-available conference call has been requested in a Board Recall Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Board Recall Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Board regarding the availability of the Directors.

(ii) The Board Recall Community Forum shall be convened and concluded during the period beginning upon the expiration of the Board Recall Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Petition Support Period ("**Board Recall Community Forum Period**") unless the Board Recall Supported Petition requested that the Board Recall Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Board Recall Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants; provided, that, the date and time of any Board Recall Community Forum shall be determined after consultation with the Board regarding the availability of the Directors. If the Board Recall Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Petition Support Period, the Board Recall Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation

for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Board Recall Community Forum shall have at least one face-to-face meeting and may also be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects. If the Board Recall Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of the Board Recall Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Board Recall Community Forum in a fair and neutral manner; provided that no individual from the Board Recall Petitioning Decisional Participant or a Board Recall Supporting Decisional Participant, nor the individual who initiated the Board Recall Petition, shall be permitted to participate in the management or moderation of the Board Recall Community Forum.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Board Recall Supported Petition prior to the convening of and during the Board Recall Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and the full Board are expected to attend the Board Recall Community Forum in order to address the issues raised in the Board Recall Supported Petition.

(vii) If the Board Recall Petitioning Decisional Participant and each of the Board Recall Supporting Decisional Participants for the Board Recall Supported Petition agree before, during or after the Board Recall Community Forum that the issue raised in such Board Recall Supported Petition has been resolved, such Board Recall Supported Petition shall be deemed withdrawn and the Board Recall Process with respect to such Board Recall Supported Petition will be terminated. If a Board Recall Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Board Recall Supported Petition, deliver to the Secretary a Board Recall Process Termination Notice. For the avoidance of doubt, the Board Recall Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants.

(viii) During the Board Recall Community Forum Period, an additional one or two Board Recall Community Forums may be held at the discretion of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Board Recall Community Forum and shall promptly post on the Website a public record of the Board Recall Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting

> Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Board Recall Community Forum.

(e) Following the expiration of the Board Recall Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Board Recall Community Forum Period (such period, the "**Board Recall Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Board Recall Supported Petition, (ii) objects to such Board Recall Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Board Recall Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to expiration of the Board Recall Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Board Recall Decision Period).

(f) The EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver a written notice ("**EC (Empowered Community) Board Recall Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 3.3 of this Annex D, the EC (Empowered Community) has resolved to remove all Directors (other than the President) if (after accounting for any adjustments to the below as required by the GAC (Governmental Advisory Committee) Carve-out pursuant to Section 3.6(e) of the Bylaws if an IRP Panel found that, in implementing GAC (Governmental Advisory Committee) Consensus (Consensus) Advice, the Board acted inconsistently with the Articles or Bylaws) a Board Recall Supported Petition (i) is supported by four or more Decisional Participants, and (ii) is not objected to by more than one Decisional Participant.

(g) Upon the Secretary's receipt of an EC (Empowered Community) Board Recall Notice, all Directors (other than the President) shall be effectively removed from office and shall no longer be Directors and such vacancies shall be filled in accordance with Section 7.12 of the Bylaws.

(h) If the Board Recall Supported Petition does not obtain the support required by Section 3.3(f) of this Annex D, the Board Recall Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver to the Secretary a Board Recall Process Termination Notice. All Directors shall remain on the Board.

(i) If neither an EC (Empowered Community) Board Recall Notice nor a Board Recall Process Termination Notice are received by the Secretary prior to the expiration of the Board Recall Decision Period, the Board Recall Process shall automatically terminate and all Directors shall remain on the Board.

(j) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Board Recall Petition, (ii) Board Recall Petition Notice, (iii) Board Recall Supported Petition, (iv) EC (Empowered Community) Board Recall Notice and the written explanation provided by the EC (Empowered Community) Administration as to why the EC (Empowered Community) has chosen to recall the Board, (v) Board Recall Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.3.

Article 4 PROCEDURE FOR EXERCISE OF EC (Empowered Community)'S RIGHTS TO INITIATE MEDIATION, A COMMUNITY IRP OR

Exhibit R-34

RECONSIDERATION REQUEST

Section 4.1. MEDIATION INITIATION

(a) If the Board refuses or fails to comply with a decision by the EC (Empowered Community) delivered to the Secretary pursuant to an EC (Empowered Community) Approval Notice, EC (Empowered Community) Rejection Notice, Nominating Committee Director Removal Notice, SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Director Removal Notice or EC (Empowered Community) Board Recall Notice pursuant to and in compliance with Article 1, Article 2 or Article 3 of this Annex D, or rejects or otherwise does not take action that is consistent with a final IFR Recommendation, Special IFR Recommendation, SCWG Creation Recommendation or SCWG Recommendation, as applicable (each, an "**EC (Empowered Community) Decision**"), the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate mediation with the Board in relation to that EC (Empowered Community) Decision as contemplated by Section 4.7 of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration, the Decisional Participants and the Secretary requesting the initiation of a mediation ("**Mediation Initiation Notice**"). ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any Mediation Initiation Notice.

(b) As soon as practicable after receiving a Mediation Initiation Notice, the EC (Empowered Community) Administration and the Secretary shall initiate mediation, which shall proceed in accordance with Section 4.7 of the Bylaws.

Section 4.2. COMMUNITY IRP

(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC (Empowered Community) Administration representative of any Decisional Participant who supported the exercise by the EC (Empowered Community) of its rights in the applicable EC (Empowered Community) Decision during the applicable decision period may request that the EC (Empowered Community) initiate a Community IRP (a "**Community IRP Petitioning Decisional Participant**"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration and the Decisional Participants requesting the initiation of a Community IRP ("**Community IRP Petition**"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "**Community IRP Initiation Process**."

(b) Following the delivery of a Community IRP Petition to the EC (Empowered Community) Administration by a Community IRP Petitioning Decisional Participant pursuant to Section 4.2(a) of this Annex D (which delivery date shall be referred to herein as the "**Community IRP Notification Date**"), the Community IRP Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition. The Community IRP Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

> (i) If the Community IRP Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community IRP Supporting Decisional Participant**") during the period beginning on the Community IRP Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the Community IRP Notification Date (the "**Community IRP Petition Support Period**"), the Community IRP Petitioning Decisional Participant shall provide a written

notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Community IRP Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community IRP Supporting Decisional Participant. Each Community IRP Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community IRP Petition. Such Community IRP Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community IRP Petitioning Decisional Participant who shall act as a liaison with respect to the Community IRP Supported Petition;

(C) a statement as to whether or not the Community IRP Petitioning Decisional Participant and/or the Community IRP Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Community IRP Community Forum (as defined in Section 4.2(c) of this Annex D) for the community to discuss the Community IRP Supported Petition;

(D) a statement as to whether the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant have determined to hold the Community IRP Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting;

(E) where the Community IRP Supported Petition relates to a Fundamental Bylaw Amendment, a PDP (Policy Development Process) Fundamental Bylaw Statement if applicable and, if so, the name of the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant;

(F)where the Community IRP Supported Petition relates to an Articles Amendment, a PDP (Policy Development Process) Articles Statement if applicable and, if so, the name of the Articles Amendment PDP (Policy Development Process) Decisional Participant;

(G)where the Community IRP Supported Petition relates to a Standard Bylaw Amendment, a PDP (Policy Development Process) Standard Bylaw Statement if applicable and, if so, the name of the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant; and

(H) where the Community IRP Supported Petition relates to a policy recommendation of a cross community working group chartered by more than one Supporting Organization (Supporting Organization) ("**CCWG Policy Recommendation**"), a statement citing the specific CCWG Policy Recommendation and related provision in the Community IRP Supported Petition ("**CCWG Policy Recommendation Statement**"), and, if so, the name of any Supporting Organization (Supporting Organization) that is a Decisional Participant that approved the CCWG Policy Recommendation ("**CCWG Policy Recommendation Decisional Participant**").

The Community IRP Initiation Process shall thereafter continue for such Community IRP Supported Petition pursuant to Section 4.2(c) of this Annex D.

(ii) The Community IRP Initiation Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Petition Support Period, deliver to the Secretary a notice certifying that the Community IRP Initiation Process has been terminated with respect to the Community IRP included in the Community IRP Petition ("**Community IRP Termination Notice**") if:

(A) no Community IRP Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Community IRP Petition during the Community IRP Petition Support Period;

(B) where the Community IRP Supported Petition includes a PDP (Policy Development Process) Fundamental Bylaw Statement, the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(C)where the Community IRP Supported Petition includes a PDP (Policy Development Process) Articles Statement, the Articles Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(D)where the Community IRP Supported Petition includes a PDP (Policy Development Process) Standard Bylaw Statement, the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants; or

(E) where the Community IRP Supported Petition includes a CCWG Policy Recommendation Statement, the CCWG Policy Recommendation Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants.

(c) If the EC (Empowered Community) Administration receives a Community IRP Supported Petition under Section 4.2(b) of this Annex D during the Community IRP Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community IRP Supported Petition ("**Community IRP Community Forum**").

(i) If a publicly-available conference call has been requested in a Community IRP Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Community IRP Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(ii) The Community IRP Community Forum shall be convened and concluded during the period beginning on the expiration of the Community IRP Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community IRP Petition Support Period ("**Community IRP Community Forum Period**") unless the Community IRP Supported Petition requested that the Community IRP Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Community IRP Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s). If the Community IRP Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community IRP Petition Support Period, the

Community IRP Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Community IRP Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects and/or, only if the Community IRP Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Community IRP Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Community IRP Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Community IRP Community Forum in a fair and neutral manner.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Community IRP Supported Petition prior to the convening of and during the Community IRP Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Community IRP Community Forum in order to discuss the Community IRP Supported Petition.

(vii) If the Community IRP Petitioning Decisional Participant and each of the Community IRP Supporting Decisional Participants for the Community IRP Supported Petition agree before, during or after a Community IRP Community Forum that the issue raised in such Community IRP Supported Petition has been resolved, such Community IRP Supported Petition shall be deemed withdrawn and the Community IRP Initiation Process with respect to such Community IRP Supported Petition will be terminated. If a Community IRP Initiation Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community IRP Supported Petition, deliver to the Secretary a Community IRP Termination Notice. For the avoidance of doubt, the Community IRP Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s).

(viii) During the Community IRP Community Forum Period, an additional one or two Community IRP Community Forums may be held at the discretion of a Community IRP Petitioning Decisional Participant and a related Community IRP Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Community IRP Community Forum and shall promptly post on the Website a public record of the Community IRP Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting

> Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Community IRP Community Forum.

(d) Following the expiration of the Community IRP Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Community IRP Community Forum Period (such period, the "**Community IRP Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Community IRP Supported Petition, (ii) objects to such Community IRP Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community IRP Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Community IRP Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Community IRP Decision Period).

(e) The EC (Empowered Community) Administration, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, shall promptly deliver a written notice ("**EC (Empowered Community) Community IRP Initiation Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.2 of this Annex D, the EC (Empowered Community) has resolved to accept the Community IRP Supported Petition if:

> (i) A Community IRP Supported Petition that does not include a PDP (Policy Development Process) Fundamental Bylaw Statement, a PDP (Policy Development Process) Articles Statement, a PDP (Policy Development Process) Standard Bylaw Statement or a CCWG Policy Recommendation Statement (A) is supported by three or more Decisional Participants, and (B) is not objected to by more than one Decisional Participant;
>
> (ii) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Fundamental Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant;
>
> (iii) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Articles Statement, (B) is supported by three or more Decisional Participants (including the Articles Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant;
>
> (iv) A Community IRP Supported Petition that (A) includes a PDP (Policy Development Process) Standard Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP (Policy Development Process) Decisional Participant), and (C) is not objected to by more than one Decisional Participant; or
>
> (v) A Community IRP Supported Petition that (A) includes a CCWG Policy Recommendation Statement, (B) is supported by three or more Decisional Participants (including the CCWG Policy Recommendation Decisional Participant), and (C) is not objected to by more than one Decisional Participant.

(f) If the Community IRP Supported Petition does not obtain the support required by Section 4.2(e) of this Annex D, the Community IRP Initiation Process will automatically be terminated and the EC (Empowered

Community) Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, deliver to the Secretary a Community IRP Termination Notice.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Community IRP Petition, (ii) Community IRP Supported Petition, (iii) EC (Empowered Community) Community IRP Initiation Notice, (iv) Community IRP Termination Notice, (v) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.2.

Section 4.3. COMMUNITY RECONSIDERATION REQUEST

(a) Any Decisional Participant may request that the EC (Empowered Community) initiate a Reconsideration Request (a "**Community Reconsideration Petitioning Decisional Participant**"), as contemplated by Section 4.2(b) of the Bylaws, by delivering a notice to the EC (Empowered Community) Administration and the other Decisional Participants, with a copy to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website, requesting the review or reconsideration of an action or inaction of the ICANN (Internet Corporation for Assigned Names and Numbers) Board or staff ("**Community Reconsideration Petition**"). A Community Reconsideration Petition must be delivered within 30 days after the occurrence of any of the conditions set forth in Section 4.2(g)(i)(A), (B) or (C) of the Bylaws. In that instance, the Community Reconsideration Petition must be delivered within 30 days from the initial posting of the rationale. The process set forth in this Section 4.3 of this Annex D as it relates to a particular Community Reconsideration Petition is referred to herein as the "**Community Reconsideration Initiation Process**."

(b) Following the delivery of a Community Reconsideration Petition to the EC (Empowered Community) Administration by a Community Reconsideration Petitioning Decisional Participant pursuant to Section 4.3(a) of this Annex D (which delivery date shall be referred to herein as the "**Community Reconsideration Notification Date**"), the Community Reconsideration Petitioning Decisional Participant shall contact the EC (Empowered Community) Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community Reconsideration Petition. The Community Reconsideration Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website.

> (i) If the Community Reconsideration Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community Reconsideration Supporting Decisional Participant**") during the period beginning on the Community Reconsideration Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the Community Reconsideration Notification Date (the "**Community Reconsideration Petition Support Period**"), the Community Reconsideration Petitioning Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary ("**Community Reconsideration Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community Reconsideration Supporting Decisional Participant. Each Community Reconsideration Supporting Decisional Participant shall provide a written notice to the EC (Empowered Community) Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community Reconsideration Petition. Such Community Reconsideration Supported Petition shall include:
>
> (A) a supporting rationale in reasonable detail;
>
> (B) contact information for at least one representative who has been designated by the Community Reconsideration Petitioning Decisional Participant who shall act as a liaison with respect to the

Community Reconsideration Supported Petition;

(C) a statement as to whether or not the Community Reconsideration Petitioning Decisional Participant and/or the Community Reconsideration Supporting Decisional Participant requests that ICANN (Internet Corporation for Assigned Names and Numbers) organize a publicly-available conference call prior to the Community Reconsideration Community Forum (as defined in Section 4.3(c) of this Annex D) for the community to discuss the Community Reconsideration Supported Petition; and

(D) a statement as to whether the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant have determined to hold the Community Reconsideration Community Forum during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

The Community Reconsideration Initiation Process shall thereafter continue for such Community Reconsideration Supported Petition pursuant to Section 4.3(c) of this Annex D.

(ii) The Community Reconsideration Initiation Process shall automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Petition Support Period, deliver to the Secretary a notice certifying that the Community Reconsideration Initiation Process has been terminated with respect to the Reconsideration Request included in the Community Reconsideration Petition ("**Community Reconsideration Termination Notice**") if the Community Reconsideration Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Community Reconsideration Petition during the Community Reconsideration Petition Support Period.

(c) If the EC (Empowered Community) Administration receives a Community Reconsideration Supported Petition under Section 4.3(b) of this Annex D during the Community Reconsideration Petition Support Period, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community Reconsideration Supported Petition ("**Community Reconsideration Community Forum**").

(i) If a publicly-available conference call has been requested in a Community Reconsideration Supported Petition, ICANN (Internet Corporation for Assigned Names and Numbers) shall, at the direction of the EC (Empowered Community) Administration, schedule such call prior to any Community Reconsideration Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(ii) The Community Reconsideration Community Forum shall be convened and concluded during the period beginning on the expiration of the Community Reconsideration Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period ("**Community Reconsideration Forum Period**") unless the Community Reconsideration Supported Petition requested that the Community Reconsideration Community Forum be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, in which case the Community Reconsideration Community Forum shall be held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the date and at the time determined by ICANN (Internet Corporation for Assigned Names and Numbers), taking into account any date and/or time requested by the Community Reconsideration

Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s). If the Community Reconsideration Community Forum is held during the next scheduled ICANN (Internet Corporation for Assigned Names and Numbers) public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period, the Community Reconsideration Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting on the official last day of such ICANN (Internet Corporation for Assigned Names and Numbers) public meeting.

(iii) The Community Reconsideration Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC (Empowered Community) Administration selects and/or, only if the Community Reconsideration Community Forum is held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, face-to-face meetings. If the Community Reconsideration Community Forum will not be held during an ICANN (Internet Corporation for Assigned Names and Numbers) public meeting, the EC (Empowered Community) Administration shall promptly inform ICANN (Internet Corporation for Assigned Names and Numbers) of the date, time and participation methods of such Community Reconsideration Community Forum, which ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post on the Website.

(iv) The EC (Empowered Community) Administration shall manage and moderate the Community Reconsideration Community Forum in a fair and neutral manner.

(v) ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) may deliver to the EC (Empowered Community) Administration in writing its views and questions on the Community Reconsideration Supported Petition prior to the convening of and during the Community Reconsideration Community Forum. Any written materials delivered to the EC (Empowered Community) Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN (Internet Corporation for Assigned Names and Numbers).

(vi) ICANN (Internet Corporation for Assigned Names and Numbers) staff and Directors representing the Board are expected to attend the Community Reconsideration Community Forum in order to discuss the Community Reconsideration Supported Petition.

(vii) If the Community Reconsideration Petitioning Decisional Participant and each of the Community Reconsideration Supporting Decisional Participants for a Community Reconsideration Supported Petition agree before, during or after the Community Reconsideration Community Forum that the issue raised in such Community Reconsideration Supported Petition has been resolved, such Community Reconsideration Supported Petition shall be deemed withdrawn and the Community Reconsideration Initiation Process with respect to such Community Reconsideration Supported Petition will be terminated. If a Community Reconsideration Initiation Process is terminated, the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community Reconsideration Supported Petition, deliver to the Secretary a Community Reconsideration Termination Notice. For the avoidance of doubt, the Community Reconsideration Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s).

(viii) During the Community Reconsideration Community Forum Period, an additional one or two Community Reconsideration Community Forums may be held at the discretion of a Community Reconsideration Petitioning Decisional Participant and a related Community Reconsideration Supporting Decisional Participant, or the EC (Empowered Community) Administration.

(ix) ICANN (Internet Corporation for Assigned Names and Numbers) will provide support services for the Community Reconsideration Community Forum and shall promptly post on the Website a public record of the Community Reconsideration Community Forum as well as all written submissions of ICANN (Internet Corporation for Assigned Names and Numbers) and any Supporting Organization (Supporting Organization) or Advisory Committee (Advisory Committee) (including Decisional Participants) related to the Community Reconsideration Community Forum.

(d) Following the expiration of the Community Reconsideration Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN (Internet Corporation for Assigned Names and Numbers)'s principal office) on the 21st day after the expiration of the Community Reconsideration Community Forum Period (such period, the "**Community Reconsideration Decision Period**"), each Decisional Participant shall inform the EC (Empowered Community) Administration in writing as to whether such Decisional Participant (i) supports such Community Reconsideration Supported Petition, (ii) objects to such Community Reconsideration Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community Reconsideration Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN (Internet Corporation for Assigned Names and Numbers) to promptly post on the Website. If a Decisional Participant does not inform the EC (Empowered Community) Administration of any of the foregoing prior to the expiration of the Community Reconsideration Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC (Empowered Community) Administration of its support or objection following the expiration of the Community Reconsideration Decision Period).

(e) If (i) three or more Decisional Participants support the Community Reconsideration Supported Petition and (ii) no more than one Decisional Participant objects to the Community Reconsideration Supported Petition, then the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver a notice to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.3 of this Annex D, the EC (Empowered Community) has resolved to accept the Community Reconsideration Supported Petition ("**EC (Empowered Community) Reconsideration Initiation Notice**"). The Reconsideration Request shall then proceed in accordance with Section 4.2 of the Bylaws.

(f) If the Community Reconsideration Supported Petition does not obtain the support required by Section 4.3(e) of this Annex D, the Community Reconsideration Initiation Process will automatically be terminated and the EC (Empowered Community) Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver to the Secretary a Community Reconsideration Termination Notice.

(g) ICANN (Internet Corporation for Assigned Names and Numbers) shall promptly post to the Website any (i) Community Reconsideration Petition, (ii) Community Reconsideration Supported Petition, (iii) EC (Empowered Community) Reconsideration Initiation Notice, (iv) Community Reconsideration Termination Notice, (v) written explanation provided by the EC (Empowered Community) Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.3.

Annex E: Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles

1. Principles

The caretaker ICANN (Internet Corporation for Assigned Names and Numbers) budget (the "**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles**"):

a. It is based on then-current ICANN (Internet Corporation for Assigned Names and Numbers) operations;

b. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the EC (Empowered Community) pursuant to the Bylaws;

c. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to react to emergency situations in a fashion that preserves the continuation of its operations;

d. It allows ICANN (Internet Corporation for Assigned Names and Numbers) to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

e. It enables ICANN (Internet Corporation for Assigned Names and Numbers) to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN (Internet Corporation for Assigned Names and Numbers) Budget is rejected by the EC (Empowered Community) pursuant to the Bylaws and when an ICANN (Internet Corporation for Assigned Names and Numbers) Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and

f. Notwithstanding any other principle listed above, it prevents ICANN (Internet Corporation for Assigned Names and Numbers) from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN (Internet Corporation for Assigned Names and Numbers) Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget that was rejected by the EC (Empowered Community) that triggered the need for the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

1. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles, of what a Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget would logically include:

i. the functioning of the EC (Empowered Community), the Decisional Participants, and any Supporting Organizations (Supporting Organizations) or Advisory Committees (Advisory Committees) that are not Decisional Participants;

ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;

iii. employment of staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

iv. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) in the normal course of business;

v. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

vi. operating all existing ICANN (Internet Corporation for Assigned Names and Numbers) offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

vii. contracting with vendors as needed in the normal course of business;

viii. conducting ICANN (Internet Corporation for Assigned Names and Numbers) meetings and ICANN (Internet Corporation for Assigned Names and Numbers) intercessional meetings previously contemplated; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles, of what a Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN (Internet Corporation for Assigned Names and Numbers) does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN (Internet Corporation for Assigned Names and Numbers) Budget by the EC (Empowered Community) pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

iii. entering into new agreements in relation to opening or operating new ICANN (Internet Corporation for Assigned Names and Numbers) locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC (Empowered Community) that triggered the need for the Caretaker ICANN (Internet Corporation for Assigned Names and Numbers) Budget.

Annex F: Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles

1. Principles

The caretaker IANA (Internet Assigned Numbers Authority) Budget (the "**Caretaker IANA (Internet Assigned Numbers Authority) Budget**") is defined as an annual operating plan and budget that is

established by the CFO in accordance with the following principles (the "**Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles**"):

a. It is based on then-current operations of the IANA (Internet Assigned Numbers Authority) functions;

b. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA (Internet Assigned Numbers Authority) Budget by the EC (Empowered Community) pursuant to the Bylaws;

c. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to react to emergency situations in a fashion that preserves the continuation of its operations;

d. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);

e. It allows ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA (Internet Assigned Numbers Authority) Budget is rejected by the EC (Empowered Community) pursuant to the Bylaws and when an IANA (Internet Assigned Numbers Authority) Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise need to be restarted at an incremental cost; and

f. Notwithstanding any other principle listed above, it prevents ICANN (Internet Corporation for Assigned Names and Numbers), in its responsibility to fund the operations of the IANA (Internet Assigned Numbers Authority) functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA (Internet Assigned Numbers Authority) Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA (Internet Assigned Numbers Authority) Budget that was rejected by the EC (Empowered Community) that triggered the need for the Caretaker IANA (Internet Assigned Numbers Authority) Budget.

1. Examples

a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles, of what a Caretaker IANA (Internet Assigned Numbers Authority) Budget would logically include:

i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;

ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) in the normal course of business;

iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA (Internet Assigned Numbers Authority) functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN (Internet Corporation for Assigned Names and Numbers)'s Customer Standing Committee or the customers of the IANA (Internet Assigned Numbers Authority) functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN (Internet Corporation for Assigned Names and Numbers) or its affiliates is a party that relate to the IANA (Internet Assigned Numbers Authority) functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles, of what a Caretaker IANA (Internet Assigned Numbers Authority) Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA (Internet Assigned Numbers Authority) functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA (Internet Assigned Numbers Authority) Budget by the EC (Empowered Community) pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA (Internet Assigned Numbers Authority) functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA (Internet Assigned Numbers Authority) Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC (Empowered Community) that triggered the need for the Caretaker IANA (Internet Assigned Numbers Authority) Budget.

ANNEX G-1

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD (generic Top Level Domain) registrars are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the

DNS (Domain Name System);

- functional and performance specifications for the provision of registrar services;
- registrar policies reasonably necessary to implement Consensus (Consensus) Policies relating to a gTLD (generic Top Level Domain) registry;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or
- restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (Top Level Domain) (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in a TLD (Top Level Domain) that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS (Domain Name System) or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD (Top Level Domain) by a registrar losing accreditation; and
- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

ANNEX G-2

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD (generic Top Level Domain) registries are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS (Domain Name System);
- functional and performance specifications for the provision of registry services;
- security and stability of the registry database for a TLD (Top Level Domain);
- registry policies reasonably necessary to implement Consensus (Consensus) Policies relating to registry operations or registrars;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (Top Level Domain) (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in the TLD (Top Level Domain) that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS (Domain Name System) or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD (Top Level Domain) affected by such a suspension or termination.

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[1] When "1 October 2016" is used, that signals that the date that will be used is the effective date of the Bylaws.

Ex. R-35

RESPONDENT'S EXHIBIT

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Independent Review Process Panel

In the Matter of an Independent Review Process

Between:

Booking.com B.V.

Applicant

-and-

ICDR Case No: 50-20-1400-0247

Internet Corporation for Assigned Names and Numbers (ICANN)

Respondent

FINAL DECLARATION

The Panel:

Hon. A. Howard Matz
David H. Bernstein, Esq.
Stephen L. Drymer (Chair)

TABLE OF CONTENTS

I. INTRODUCTION 2

II. THE PARTIES 3

A. The Applicant: Booking.com 3

B. The Respondent: ICANN 3

III. FACTUAL AND PROCEDURAL BACKGROUND – IN BRIEF 3

A. ICANN's Adoption of the New gTLD Program and the Applicant Guidebook 3

B. Booking.com's Application for .hotels, and the Outcome 5

C. DIDP Request and Request for Reconsideration 6

D. The Cooperative Engagement Process 9

E. The IRP Proceedings 10

F. The Hearing 11

IV. ICANN ARTICLES, BYLAWS AND POLICIES – KEY ELEMENTS 11

A. Articles of Association 11

B. Bylaws 11

C. The gTLD Applicant Guidebook 16

(i) Initial Evaluation 16

(ii) String Review, including String Similarity Review 16

V. SUMMARY OF THE PARTIES' POSITIONS 21

A. Booking.com's position 21

(i) The Panel's Authority 21

(ii) Booking.com's Claims 22

a. The string similarity review process 22

b. The case of .hotels 24

B. ICANN's position 26

(i) The Panel's Authority 26

(ii) ICANN's Response to Booking.com's Claims 27

a. The string similarity review process 27

b. The case of .hotels 29

VI. ANALYSIS 29

A. The Panel's Authority 29

B. The String Similarity Review Process 33

C. The Case of .hotels 37

D. Conclusion 42

VII. THE PREVAILING PARTY; COSTS 43

DECLARATION

WE, THE UNDERSIGNED PANELISTS, members of the Independent Review Process Panel ("**IRP Panel**" or "**Panel**"), having been designated in accordance with ICANN Bylaws dated 11 April 2013, hereby issue the following Final Declaration ("**Declaration**"):[1]

I. INTRODUCTION

1. This Declaration is issued in the context of an Independent Review Process ("**IRP**") as provided for in Article IV, Section 3 of the Bylaws of the Internet Corporation for Assigned Names and Numbers ("**ICANN**"; "**ICANN Bylaws**" or "**Bylaws**"). In accordance with those Bylaws, the conduct of this IRP is governed by the International Arbitration Rules of the International Centre for Dispute Resolution as amended and in effect June 1, 2009 ("**ICDR**"; "**ICDR Rules**") as supplemented by the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process ("**Supplementary Procedures**").

2. The subject matter of the dispute here concerns alleged conduct by the ICANN Board in relation to one particular facet of the process by which new generic top-level domains ("**gTLDs**", also known as gTLD "**strings**") are applied for, reviewed and delegated into the Internet's domain name system ("**DNS**") root zone.

3. As explained in this Declaration, the Applicant, Booking.com, alleges that, in establishing and overseeing the process by which so-called *string similarity reviews* are conducted, and in refusing to reconsider and overturn a decision to place Booking.com's applied-for gTLD string .hotels in a so-called *string contention set*, the Board acted in a manner inconsistent with applicable policies, procedures and rules as set out in ICANN's Articles of Incorporation, Bylaws and gTLD Applicant Guidebook ("**Guidebook**").

4. Reading between the lines of the parties' submissions, the Panel senses that both sides would welcome the opportunity to contribute to an exchange that might result in enabling disputants in future cases to avoid having to resort to an IRP to resolve issues such as have arisen here. Certainly the Panel considers that the present matter would ideally have been resolved amicably by the parties. This is particularly true given that the matter here concerns two of ICANN's guiding principles – transparency and fairness – as applied to one of ICANN's most essential activities – the delegation of new gTLDs[2] – in circumstances in which various members of the Internet community, including certain members of the ICANN Board's New gTLD Program Committee, have expressed their own concerns regarding the string similarity review process. That being the case, though, the Panel does not shy away from the duty imposed by the Bylaws to address the questions before it and to render the

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[1] As requested by the ICDR, the Declaration was provided to the ICDR in draft form on 26 January 2015 for non-substantive comments on the text (if any). It was returned to the Panel on 2 March 2015.

[2] As stated in the very first sentence of the Guidebook: "New gTLDs have been in the forefront of ICANN's agenda since its creation."

present Declaration, in accordance with, and within the constraints of the Bylaws, the ICDR Rules and the Supplementary Procedures.

II. THE PARTIES

A. The Applicant: Booking.com

5. The Applicant, Booking.com, is a limited liability company established under the law of the Netherlands. Booking.com describes itself as "the number one online hotel reservation service in the world, offering over 435,605 hotels and accommodations."[3] Booking.com's primary focus is on the U.S. and other English-language markets.

6. Booking.com is represented in this IRP by Mr. Flip Petillion and Mr. Jan Janssen of the law firm *Crowell & Moring* in Brussels, Belgium.

B. The Respondent: ICANN

7. The Respondent, ICANN, is a California not-for-profit public benefit corporation, formed in 1998. As set forth in Article I, Section 1 of its Bylaws, ICANN's mission is "to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure option of the Internet's unique identifier systems." ICANN describes itself as "a complex organization that facilitates input from a wide variety of Internet stakeholders. ICANN has a Board of Directors and staff members from around the globe, as well as an Ombudsman. ICANN, however, is much more than just the corporation—it is a community of participants."[4]

8. ICANN is represented in this IRP by Mr. Jeffrey A. LeVee, Esq. and Ms. Kate Wallace, Esq. of the law firm *Jones Day* in Los Angeles, California, USA.

III. FACTUAL AND PROCEDURAL BACKGROUND – IN BRIEF

9. We recount here certain uncontested elements of the factual and procedural background to the present IRP. Other facts are addressed in subsequent parts of the Declaration, where the parties' respective claims and the Panel's analysis are discussed.

A. ICANN's Adoption of the New gTLD Program and the Applicant Guidebook

10. Even before the introduction of ICANN's New gTLD Program ("**Program**"), in 2011, ICANN had, over time, gradually expanded the DNS from the original six gTLDs (.com; .edu; .gov; .mil; .net; .org) to 22 gTLDs and over 250 two-letter country-code TLDs.[5] Indeed, as noted above, the introduction of new gTLDs has been "in the forefront of ICANN's agenda" for as long as ICANN has existed.

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[3] Request, ¶ 10.

[4] Response, ¶ 11-12.

[5] Request, ¶ 12; see also Guidebook, *Preamble*.

11. The Program has its origins in what the Guidebook refers to as "carefully deliberated policy development work" by the ICANN community.[6]

12. In 2005, ICANN's Generic Names Supporting Organization ("**GNSO**"), one of the groups that coordinates global Internet policy at ICANN, commenced a policy development process to consider the introduction of new gTLDs.[7] As noted in the Guidebook:

> *Representatives from a wide variety of stakeholder groups – governments, individuals, civil society, business and intellectual property constituencies, and the technology community – were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward.*

13. In October 2007, the GNSO formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations.

14. In June 2008, the ICANN Board decided to adopt the policies recommended by the GNSO.[8] As explained in the Guidebook, ICANN's work next focused on implementation of these recommendations, which it saw as "creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval."[9]

15. This process concluded with the decision by the ICANN Board in June 2011 to implement the New gTLD Program and its foundational instrument, the Guidebook.[10]

16. As described by ICANN in these proceedings, the Program "constitutes by far ICANN's most ambitious expansion of the Internet's naming system. The Program's goals include

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[6] Guidebook, *Preamble*

[7] Request, ¶ 13, Reference Material 7, "Public Comment Forum for Terms of Reference for New gTLDs (6 December 2005), http://www.icann.org/en/news/announcements/announcement-06dec05-en.htm#TOR; Reference Material 8, "GNSO Issues Report, Introduction of New Top-Level Domains (5 December 2005) at pp. 3-4. See also Guidebook, *Preamble*. Booking.com refers to the GNSO as "ICANN's main policy-making body for generic top-level domains". Article X of ICANN's Articles of Incorporation provides: "There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains" (Section 1); the GNSO shall consist of "a number of Constituencies" and "four Stakeholder Groups" (Section 2).

[8] Guidebook, *Preamble*. A review of this policy process can be found at http://gnso.icann.org/issues/new-gtlds (last accessed on January 15, 2015).

[9] Guidebook, *Preamble*: "This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook."

[10] RM 10 (ICANN resolution). The Guidebook (in its 30 May 2011 version) is one of seven "elements" of the Program implemented in 2011. The other elements were: a draft communications plan; "operational readiness activities"; a program to ensure support for applicants from developing countries; "a process for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the [Program]"; budgeted expenditures; and a timetable.

enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs ...".[11]

17. The Guidebook is "continuously iterated and revised", and "provides details to gTLD applicants and forms the basis for ICANN's evaluation of new gTLD applications."[12] As noted by Booking.com, the Guidebook "is the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs."[13]

B. Booking.com's Application for .hotels, and the Outcome

18. In accordance with the process set out in the Guidebook, Booking.com filed an application (Application ID 1-1016-75482) for the gTLD string .hotels.

19. At the same time, Despegar Online SRL ("**Despegar**"), a corporation established under the law of Uruguay, applied (Application ID 1-1249-87712) for the string .hoteis.

20. "Hoteis" is the Portuguese word for "hotels".

21. According to Booking.com, Despegar is "a competitor of Booking.com".[14] Booking.com claims that it intends "to operate .hotels as a secure Internet environment providing hotel reservation services for consumers, hotels, and other stakeholders,"[15] while Despegar similarly intends .hoteis to be dedicated primarily to "individuals that are interested in, and businesses that offer, hotel- and travel-related content."[16] That being said, a key difference between the two applications, as Booking.com acknowledges, is that Booking.com intends to focus the services it will offer under its proposed gTLD "on the U.S. (with its strongly Anglos-Saxon traditions) and other English-language markets,"[17] whereas Despegar intends to target "Portuguese-speaking" markets."[18]

22. As part of the Initial Evaluation to which all applied-for gTLDS were subject, .hotels and .hoteis were each required to undergo so-called *string review* in accordance with the Guidebook, the first component of which is a process known as *string similarity review*. As provided by the Guidebook, the string similarity review was conducted by an independent

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[11] Response, ¶ 14.

[12] Response, ¶ 14. The resolution (RM 10) adopting the Guidebook explicitly "authorizes staff to make further updates and changes to the Applicant Guidebook as necessary and appropriate, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process, and to prominently publish notice of such changes."

[1313] Request, ¶ 13. See also Guidebook, Module 1-2: "This Applicant Guidebook is the implementation of Board approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period."

[1414] Request, ¶ 17.

[15] Request, ¶ 5.

[16] Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

[17] Request, ¶ 16.

[18] Request, ¶ 17. See also Despegar Application for .hoteis (Request, Annex 2), § 18(a).

String Similarity Panel ("**SSP**") selected and engaged by ICANN for this purpose. (Extracts of the relevant provisions of the Guidebook can be found below, at Part IV of this Declaration.) ICANN engaged InterConnect Communications Ltd. ("**ICC**"), a company registered under the law of England and Wales, specializing in communications sector strategy, policy and associated regulatory frameworks,[19] in cooperation with University College London, to act as the SSP.

23. On 26 February 2013 ICANN published the results of all of the string similarity reviews for all of the applications for new gTLDs submitted as part of the Program. The announcement revealed, among other things, that two "non-exact match" contention sets had been created: .hotels & .hoteis; and .unicorn & .unicom.[20] Booking.com's applied for string .hotels (as well as the .hoteis, .uncorn and .unicom strings) had thus failed the string similarity review.

24. The results of the string similarity review were notified to Booking.com by ICANN that same day. In its letter of 26 February 2013 ICANN wrote:

> *After careful consideration and extensive review performed against the criteria in Section 2.2.1.1 of the Applicant Guidebook, the String Similarity Panel has found that the applied-for string (.hotels) is visually similar to another applied-for string (.hoteis), creating a probability of user confusion.*
>
> *Due to this finding, the … two strings have been placed in a contention set.*[21]

25. The impact of being put into a contention set is that the proposed strings in the set will not be delegated in the root zone unless and until the applicants reach agreement on which single string should proceed (with the other proposed string therefore rejected), or until after an auction is conducted, with the highest bidder being given the right to proceed to the next step in the review process.

C. DIDP Request and Request for Reconsideration

26. On 28 March 2013 Booking.com submitted a request for information under ICANN's Documentary Information Disclosure Policy ("**DIDP Request**") asking for "all documents directly and indirectly relating to (1) the standard used to determine whether gTLD strings are confusingly similar, and (2) the specific determination that .hotels and .hoteis are confusingly similar."[22]

27. On the same date, Booking.com also filed a formal Request for Reconsideration ("**Request for Reconsideration**"). The "specific action(s)" that Booking.com asked to be reconsidered were: the decision to place .hotels and .hoteis in a contention set; and the decision not to

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[19] See http://www.icc-uk.com/

[20] Request, Annex 3. ICANN published document dated 26 February 2013. As its name suggests, a "non-exact match" connotes a determination that two different (non-identical) strings are visually similar within the meaning of the Guidebook. Another752 applied-for gTLDs were put into 230 identical contention sets.

[21] Request, Annex 3, ICANN letter dated 26 February 2013.

[22] Request, ¶ 30 and Annex 3.

provide a "detailed analysis or a reasoned basis" for the decision to place .hotels in contention.[23]

28. ICANN responded to the DIDP Request on 27 April 2013. Although ICANN provided certain information regarding the review process, in its response to the DIDP Request, ICANN also noted:

> *The SSP is responsible for the development of its own process documentation and methodology for performing the string similarity review, and is also responsible for the maintenance of its own work papers. Many of the items that are sought from ICANN within the [DIDP] Request are therefore not in existence within ICANN and cannot be provided in response to the DIDP Request. ICANN will, however, shortly be posting the SSP's String Similarity Process and Workflow on the New gTLD microsite …*[24]

29. By letter dated 9 May 2013 Booking.com replied to ICANN, writing that "ICANN's response fails to provide any additional information or address any of Booking.com's concerns as conveyed in its DIDP Request or Request for Reconsideration."[25] On 14 May 2013, ICANN answered that it "intends to post the string similarity process documentation on or before … 17 May 2013."[26] ICANN further informed Booking.com that "ICANN will afford you 30 days from the posting of the process document for the submission of a revised Request for Reconsideration."[27]

30. On 7 June 2013, ICANN published the "String Similarity New gTLD Evaluation Panel [i.e., the SSP] – Process Description" ("**SSP Process Description**").[28]

31. On 26 June 2013 Booking.com wrote to ICANN regarding both its DIDP Request and its 28 March 2013 Request for Reconsideration. In its letter, Booking.com noted among other things that "the generalized information ICANN thus far has provided does not explain a rationale for or analysis for the decision to put .hotels and .hoteis in a contention set and therefore does not allow Booking.com to appropriately amend its Request for Reconsideration." The letter concluded by stating: "Considering ICANN's obligations of transparency and accountability, there cannot be any 'compelling reason for confidentiality'.

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[23] Request, Annex 12, §3. The Request for Reconsideration (which appears to be in the form of a template) expressly states at §2 that it is a "Request for Reconsideration of … Staff [vs. Board] action/inaction." The cover letter attaching the Request states that, "[d]espite the fact that the origin of the decisions is unclear, this Reconsideration Request is being submitted as a reconsideration of a 'Staff action'. In the event that the decisions referenced above are determined to be a 'Board action', this request may be amended." As explained below, the Request for Reconsideration was amended on 7 July 2013. That amendment did not alter the stated nature of the request in §2 or the description of the specific actions that Booking.com sought to have reconsidered (§3). Unless otherwise indicated, all further references in this Declaration to the Request for Reconsideration are understood to be the *amended* Request for Reconsideration.

[24] Request, Annex 5.

[25] Request, Annex 6.

[26] Request, Annex 7.

[27] Request, Annex 7.

[28] Request, Annex 8.

And … there are numerous compelling reasons for publication of [the information requested by Booking.com]."[29]

32. ICANN responded on 25 July 2013, explaining among other things that "the evaluation of the .hotels string by the SSP panel was performed according to the [SSP Process Description] …" and "[t]he SSP's work was subjected to quality review, as has been publicly discussed."[30] Approximately six months later, on 9 January 2014, ICANN posted a letter dated 18 December 2013 addressed to ICANN by the SSP Manager at ICC (Mr. Mark McFadden) providing a further "summary of the process, quality control mechanisms and some considerations surrounding the non-exact contention sets for the string similarity evaluation …" ("**SSP Manager's Letter**").[31] According to that Letter:

> *When ALL of the following features of a pairwise comparison [of non-exact match strings] are evident the evaluators found the string pair to be confusingly similar:*
>
> • *Strings of similar visual length on the page;*
>
> • *Strings within +/- 1 character of each other;*
>
> • *Strings where the majority of characters are the same and in the same position in each string; and*
>
> • *The two strings possess letter combinations that visually appear similar to other letters in the same position in each string*
>
> o *For example rn~m & l~i*

33. Meanwhile, on 7 July 2013 Booking.com had submitted its amended Request for Reconsideration. In its letter attaching the amended Request for Reconsideration, Booking.com stated: "Booking.com reserves the right to further amend its Request for Reconsideration upon receipt of the information it previously requested and urges ICANN to publish the requested information as specified in our letter of 26 June 2013."[32]

34. By virtue of Article IV, Section 3 of the Bylaws, ICANN's Board Governance Committee ("**BGC**") is charged with evaluating and making recommendation to the Board with respect to requests for reconsideration. The Board's New gTLD Program Committee ("**NGPC**") receives and acts on such recommendations on behalf of the ICANN Board. In accordance with this procedure, Booking.com's Request for Reconsideration was evaluated by the BGC. In a detailed analysis dated 1 August 2013, the BGC "conclude[d] that Booking.com has not

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[29] Request, Annex 9.

[30] Request, Annex 10.

[31] Request, Annex 11.

[32] Request, Annex 13.

stated proper grounds for reconsideration and we therefor recommend that Booking.com's request be denied" ("**BGC Recommendation**").[33]

35. At a telephone meeting held on 10 September 2013 the NGPC, "bestowed with the powers of the Board", considered, discussed and accepted the BGC Recommendation. Booking.com's Request for Reconsideration was denied.[34]

D. The Cooperative Engagement Process

36. Booking.com thereafter filed a request for a Cooperative Engagement Process ("**CEP**") on 25 September 2013, with a view to attempting to reach an amicable resolution of its dispute with ICANN. In its CEP request, Booking.com wrote:

> *Booking.com is of the opinion that Resolution 2013.09.10.NG02 [the Board resolution denying its Request for Reconsideration] violates various provisions of ICANN's Bylaws and Articles of Incorporation. In particular Booking.com considers that ICANN's adoption of [the Resolution] is in violation of Articles I, II(3), II and IV of the ICANN Bylaws as well as Article 4 of ICANN's Articles of Incorporation. In addition, Booking.com considers that ICANN has acted in violation of Articles 3, 5, 7 and 9 of ICANN's Affirmation of Commitment ...*[35]

37. The CEP ultimately did not result in a resolution, and Booking.com duly commenced the present IRP.

38. One further point should be made, here, prior to describing the commencement and conduct of the present IRP proceedings: The determination by the SSP that .hotels and .hoteis are so visually similar as to give rise to the probability of user confusion, and the resulting placement of those applied-for strings into a contention set, does *not* mean that Booking.com's application for .hotels has been denied or that .hotels will not proceed to delegation to the root zone. Rather, as noted above and explained in the extracts from the Guidebook reproduced below, the Guidebook establishes a process for resolving such contention, under which the applicants for the contending strings in the set – here, Booking.com and Despegar – may resolve the contention by negotiation, failing which the matter will proceed to auction. Ultimately, no matter the outcome of these IRP proceedings, Booking.com may yet be successful and .hotels may yet be delegated into the Internet root zone. However, the fact that .hotels has been put into a contention set does raise the risk that .hotels may never be delegated into the root zone, or that it may be more costly for Booking.com to obtain approval of its proposed string. It also has caused a significant delay in the potential delegation of the string into the root zone (which could prove to be detrimental to the ultimate success of Booking.com's proposed string if other applicants

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[33] Request, Annex 14, BGC Recommendation dated 1 August 2013, p.9. See also Request, Annex 15, NGPC Resolution dated 10 September 2013. As noted in footnote 1 to the BGC Recommendation, the Recommendation was ultimately finalized and submitted for posting on 21 August 2013.

[34] Request, Annex 15, NGPC Resolution dated 10 September 2013.

[35] Request, Annex 17.

whose strings were not put into a contention set are able to establish themselves as pioneer providers of hotel- and travel-related services under a different new gTLD).

E. The IRP Proceedings

39. On 19 March 2014, Booking.com submitted a Notice of Independent Review, dated 18 March 2014, as well as a Request for Independent Review Process ("**Request**") accompanied by numerous supporting documents and reference materials.

40. In accordance with Article IV, Section 3(9) of the ICANN Bylaws, Booking.com requested that a three-member IRP panel be constituted to consider and determine the Request. As the omnibus standing panel referred to in Article IV, Section 3(6) of the ICANN Bylaws had yet to be established, Booking.com further proposed, in accordance with Article 6 of the ICDR Rules, that each party appoint one panelist, with the third (the Chair of the panel) to be appointed by the two party-appointed panelists.

41. On 25 April 2014, ICANN submitted a Response to ICANN's Request with supporting documents ("**Response**").

42. The parties having thereafter agreed on the number of panelists and the method of their appointment, David H. Bernstein, Esq. was duly appointed as panelist by Booking.com on 1 May 2014, and the Hon. A Howard Matz was duly appointed as panelist by ICANN on 30 May 2014.

43. On 17 July 2014, the ICDR notified the parties that Mr. Stephen L. Drymer had been duly nominated by the two party-appointed panelists as Chair of the Panel. Mr. Drymer's appointment became effective and the Panel was duly constituted as of 1 August 2014.

44. On 21 August 2014, further to consultations among the panelists and between the Panel and the parties, the Panel convened a preparatory conference with the parties (by telephone) for the purpose of discussing organizational matters, including a timetable for any further written statements or oral argument. Both parties requested the opportunity to make supplemental submissions and to present oral argument.

45. On 22 August 2014 the Panel issued Procedural Order No. 1 in which, among other things, it established a Procedural Timetable for the IRP. As specifically requested by the parties, the Procedural Order and Timetable provided for the submission of additional written statements by the parties as well as for a brief oral hearing to take place by telephone, all on dates proposed by and agreed between the parties.[36]

46. In accordance with the Procedural Timetable, on 6 October 2014 Booking.com submitted its Reply to ICANN's Response, accompanied by additional documents ("**Reply**").

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[36] Paragraph 6 of Procedural Order No. 1 provided that, in its forthcoming Reply to ICANN's Response, "Booking.com shall only address two issues raised in Respondent's Response: (1) the nature and scope of the IRP requested; (2) the nature of the relief sought by Claimant." Paragraph 7 of Procedural Order No. 1 provided that "Respondent's Sur-Reply … shall address only the issues raised in the Reply."

47. In accordance with the Procedural Timetable, ICANN submitted a Sur-Reply on 20 November 2014 ("**Sur-Reply**").

F. The Hearing

48. As provided by Procedural Order No. 1 and the Procedural Timetable, a hearing was held (by telephone) on 10 December 2011, commencing at 9:00 PST/18:00 CET.

49. In the light of the significance of the issues raised by the parties, and given the many questions prompted by those issues and by the parties' extensive written submissions and supporting materials, the Panel indicated that it would allow the hearing to continue beyond the approximately one hour originally envisaged. The hearing ultimately lasted two and one-half hours. Counsel for each party made extensive oral submissions, including rebuttal and sur-rebuttal submissions, and responded to the panelists' questions.

50. Prior to the close of the hearing each party declared that it had no objection concerning the conduct of the proceedings, that it had no further oral submissions that it wished to make, and that it considered that it had had a full opportunity to present its case and to be heard.

51. As agreed and ordered prior to the close of the hearing, the parties were provided the opportunity to file limited additional materials post-hearing, in relation to a certain question asked of them by the Panel. This was done, and, on 13 December 2014, the proceedings were declared closed.

IV. ICANN ARTICLES, BYLAWS AND POLICIES – KEY ELEMENTS

52. We set out here the key elements of ICANN's Articles of Association, Bylaws and policies on which the parties rely in their submissions and to which the Panel will refer later in this Declaration.

A. Articles of Association

> *4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.*
>
> *[Underlining added]*

B. Bylaws

> ***ARTICLE I: MISSION AND CORE VALUES***
>
> *Section 1. MISSION*
>
> *The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers,*

and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.

[…]

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.

3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN

body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

[...]

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

[...]

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.

2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:

a. one or more staff actions or inactions that contradict established ICANN policy(ies); or

b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

a. evaluate requests for review or reconsideration;

b. summarily dismiss insufficient requests;

c. evaluate requests for urgent consideration;

d. conduct whatever factual investigation is deemed appropriate;

e. request additional written submissions from the affected party, or from other parties;

f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and

g. make a recommendation to the Board of Directors on the merits of the request, as necessary.

[…]

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.

3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.

4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

a. did the Board act without conflict of interest in taking its decision?;

b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and

c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company [ICANN]?

[…]

11. The IRP Panel shall have the authority to:

a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;

b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;

c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;

e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and

f. determine the timing for each proceeding.

[…]

14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. […]

15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. […]

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.

[…]

18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

[Underlining added]

53. Lest there be any misunderstanding as regards the proper subject matter of IRP proceedings or the role of the Panel, we note that, as was clearly established during the hearing, it is common ground between the parties that the term "action" (or "actions") as used in Article IV, Section 3 of the Bylaws is to be understood as action(s) *or inaction(s)* by the ICANN Board. The Panel observes that this understanding comports not only with the provisions of Article

IV, Section 2 of the Bylaws concerning "Reconsideration", which expressly refer to "actions or inactions of the ICANN Board", but with the clear intent of Section 3 itself, which stipulates at sub-section 11 that "[t]he IRP Panel shall have the authority to: … (c) declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws."

C. The gTLD Applicant Guidebook

54. As noted above and as understood by all, the Guidebook is (to borrow Booking.com's phrase) "the crystallization of Board-approved consensus policy concerning the introduction of new gTLDs."[37]

55. The Guidebook is divided into "Modules", each of which contains various sections and sub-sections. The three Modules of primary relevance here are Modules 1, 2 and 4. Module 1, titled "Introduction to the gTLD Application Process," provides an "overview of the process for applying for a new generic top-level domains."[38] Module 2, titled "Evaluation Procedures," describes the "evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation."[39] Module 4, titled "String Contention Procedures," concerns "situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases."

(i) Initial Evaluation

56. As explained in Module 1, "[i]mmediately following the close of the application submission period, ICANN will begin checking all applications for completeness."[40] Initial Evaluation begins "immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation."[41]

57. Initial Evaluation is comprised of two main elements or types or review: *string review*, which concerns the applied-for gTLD string; and *applicant review*, which concerns the entity applying for the gTLD and its proposed registry services. It is the first of these – string review, including more specifically the component known as *string similarity review* – that is particularly relevant.

(ii) String Review, including String Similarity Review

58. String review is itself comprised of several components, each of which constitutes a separate assessment or review of the applied-for gTLD string, conducted by a separate reviewing body or panel. As explained in Module 2:

> *The following assessments are performed in the Initial Evaluation:*

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[37] Request, ¶ 13.

[38] Module 1-2. Each Module of the Guidebook is paginated separately. "Module 1-2" refers to Guidebook Module 1, page 2.

[39] Module 2-2.

[40] Guidebook, §1.1.2.2: "Administrative Completeness Check", Module 1-5.

[41] Guidebook, §1.1.2.5: "Initial Evaluation", Module 1-8 (underlining added).

- *String Reviews*
  - *String similarity*
  - *Reserved names*
  - *DNS stability*
  - *Geographic names*

[…]

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.[42]

59. As indicated, all complete applications are subject to Initial Evaluation, which means that all applied-for gTLD strings are subject to string review. String review is further described in Module 2 as follows:

> *[String review] focuses on the applied-for gTLD string to test:*
>
> - *Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;*
> - *Whether the applied-for gTLD string might adversely affect DNS security or stability; and*
> - *Whether evidence of requisite government approval is provided in the case of certain geographic names.*[43]

60. The various assessments or reviews (i.e., string similarity, reserved names, DNS stability, etc.) that comprise string review are elaborated at Section 2.2.1 of Module 2. As mentioned, the most relevant of these reviews for our purposes is *string similarity review*, which is described in detail at Section 2.2.1.1. Because of the central importance of the string similarity review process in the context of the present dispute, this section of the Guidebook is reproduced here at some length:

> ***2.2.1.1 String Similarity Review***
>
> *This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.*
>
> *Note: In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.*

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[42] Module 2-2. The same is true of applicant review, which is also comprised of various assessments concerning the applicant entity.

[43] Guidebook, §2.2: "Initial Evaluation", Module 2-4 (underlining added). See also Module 1-9: "String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS …"

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel's task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

[…]

- *Applied-for gTLD strings against other applied-for gTLD strings;*

[…]

***Similarity to Other Applied-for gTLD Strings (String Contention Sets)** – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.*

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

[…]

2.2.1.1.2 Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied- for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes. [footnote in the original: See http://icann.sword-group.com/algorithm/] Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

[…]

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

> *The panel will use a common standard to test for whether string confusion exists, as follows:*
>
> ***Standard for String Confusion** – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*
>
> ***2.2.1.1.3 Outcomes of the String Similarity Review***
>
> *An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation, and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.*
>
> *An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.*[44]
>
> *[Underlining added]*

61. Module 4 of the Guidebook, as mentioned, concerns "situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases." As explained in Module 4:

> ***4.1 String Contention***
>
> *String contention occurs when either:*
>
> *1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or*
>
> *2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.*
>
> *ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.*

[44] Module 2-5 to 2-9. As regards the concept of string contention, see also Guidebook, §1.1.2.10: "String Contention", Module 1-13: "String contention applies only when there is more than one qualified application for the same or similar gTLD strings. String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone."

(In this Applicant Guidebook, "similar" means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set.

[…]

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets …

[…]

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation [NB: community priority evaluation applies only to so-called "community" applications; it is not relevant *here] or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.*

[…]

62. As provided in Module 4, the two methods relevant to resolving a contention such as between .hotels and .hoteis are *self-resolution* (i.e., an agreement between the two applicants for the contending strings) and *auction*:

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications.

[…]

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

63. Module 5 of the Guidebook, titled *Transition to Delegation*, describes "the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone."[45] Section 5.1 states:

> *ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.*[46]
>
> *[Underlining added]*

V. SUMMARY OF THE PARTIES' POSITIONS

64. The following brief summary of the parties' respective positions is provided with a view solely to assisting the reader to understand the present Declaration. It is *not* intended to recapitulate – and it does not recapitulate – the entirety of the parties' allegations and arguments. Additional references to the parties' positions, including submissions made by them in the course of the proceedings, are contained in the discussion at Part VI below.

A. Booking.com's position

(i) The Panel's Authority

65. Booking.com submits that the mandate of the Panel is "to determine whether the contested actions of the ICANN Board are consistent with applicable rules".[47] According to Booking.com:

> *The set of rules against which the actions of the ICANN Board must be assessed includes: (i) ICANN's Articles of Incorporation and Bylaws – both of which must be interpreted in light of ICANN's Affirmation of Commitments, and both of which require compliance with inter alia International law and generally accepted good governance principles – and (ii) secondary rules created by ICANN, such as the Applicant Guidebook. In setting up, implementing and supervising its policies and processes, the Board must comply with the fundamental principles embodied in these rules. That obligation includes a duty to ensure compliance with its obligations to act in good faith, transparently, fairly, and in a manner that is non-discriminatory and ensures due process.*[48]

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[45] Module 5-2.

[46] Module 5-4.

[47] Reply, ¶ 3.

[48] Reply, ¶ 3.

66. Booking.com submits that IRP panels have broad authority to evaluate actions of the ICANN Board. An overly restrictive interpretation of the standard of review, such as proposed by ICANN in these proceedings, would, says Booking.com, "fail to ensure accountability on the part of ICANN and would be incompatible with ICANN's commitment to maintain (and improve) robust mechanisms for accountability, as required by Article 9.1 of ICANN's Affirmation of Commitments and ICANN's core values.[49]

(ii) Booking.com's Claims

67. The purpose of the IRP initiated by Booking.com is, in its own words, "to challenge the ICANN Board's handling of Booking.com's application for the new gTLD .hotels."[50] This includes the determination of the SSP to place .hotels and .hoteis in contention and the refusal of the Board (and its committees) to revise that determination. Elsewhere in its submissions, Booking.com makes an even broader claim; it asserts that it challenges the conduct of the ICANN Board in relation to what Booking.com refers to as the *setting up*, *implementation, supervision* and *review* of the entire of string similarity review process, and the Board's alleged failure "to ensure due process and to respect its fundamental obligations to ensure good faith, transparency, fairness and non-discrimination" throughout.[51]

68. In effect, Booking.com's specific claims can be divided into two broad categories: claims related to the string similarity review process generally; and claims related to the particular case of .hotels.

69. Booking.com professes that this case "is not about challenging a decision on the merits [i.e., the decision to place .hotels in contention]"; it is about "ICANN's failure to respect fundamental [procedural] rights and principles in handling New gTLD applications, in particular in the context of String Similarity Review."[52]

70. Booking.com also repeatedly emphasizes – and this is crucial – that *it does not challenge the validity or fairness of the process as set out in the Guidebook.* Rather, as indicated, it contests "the way in which that process was established, implemented and supervised by (or under the authority of) the ICANN Board."[53] Equally crucial, as will be seen, is Booking.com's acknowledgment that *the established process was followed* in the case of the review of .hotels.

a. The string similarity review process

71. According to Booking.com, the problem began when the ICANN Board failed to "provide transparency in the SSP selection process," in particular by failing "to make clear how

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[49] Reply, ¶ 6.

[50] Reply, ¶ 7.

[51] Reply, ¶ 15.

[52] Reply, ¶ 14.

[53] Reply, ¶ 17.

[ICANN] would evaluate candidate responses or how it ultimately did so."[54] The problem was compounded by the selection of ICC/University College London to perform string similarity reviews as the independent SSP. In Booking.com's words:

> *[T]he identities of the unsuccessful candidates (if any) to perform the String Similarity Review remain unknown. Applicants have never been given any information in relation to the candidate responses that were submitted. … There is no indication that any other candidate expressed an interest in performing the String Similarity Review. No information has been provided as to the steps (if any) taken by ICANN to reach out to other potential candidates. Numerous questions remain: How did ICANN deal with the situation if there was only one (or only a very few) respondent(s) wishing to perform the String Similarity Review? How did this impact on the discussions with InterConnect Communications? What are the terms of ICANN's contract with InterConnect Communications?*[55]

72. Booking.com also faults ICANN for "allowing the appointed SSP to develop and perform an unfair and arbitrary review process", specifically, by allowing the SSP "to perform the String Similarity Review (i) without any (documented) plan or methodology … (ii) without providing any transparency regarding the evaluators or the evaluation criteria ... and (iii) without informing applicants of its reasoning …".[56]

73. Among other things, Booking.com takes ICANN to task for establishing and posting the SSP Process Description and the SSP Manager's Letter (see Part III.C above) only long after the string similarity review process had ended.[57]

74. It also alleges that the factors identified in the SSP Manager's Letter are "arbitrary and baseless … not supported by any methodology capable of producing compelling and defensible conclusions … [which] has allowed applications with at least equally serious visual string similarity concerns – such as .parts/.paris, .maif/.mail, .srt/.srl, .vote/.voto and .date/.data … – to proceed while singling out .hotels/.hoteis."[58] According to Booking.com: "The failure to take actual human performance into account is at odds with the standard for assessment, *i.e.*, the likelihood of confusion on the part of the average Internet user. Hence, the approach is directly contrary to ICANN's own policy."[59]

75. Booking.com further contends that the SSP process is unfair and non-transparent due to the fact that the identity of SSP members has never been publicly disclosed.[60]

76. Further, Booking.com argues that the process is unfair, non-transparent and arbitrary – and thus violates ICANN policy – for failing to provide for a "well-documented rationale" for each

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[54] Reply, ¶ 20.

[55] Reply, ¶ 20.

[56] Reply, ¶ 23.

[57] Reply, ¶ 24.

[58] Reply, ¶ 25.

[59] Reply, ¶ 25.

[60] Reply, ¶ 26-27.

SSP determination. In the absence of reasons for each string similarity determination, says Booking.com, "there is no basis on which decisions can be evaluated and, where appropriate, challenged."[61]

77. Another ground for Booking.com's challenge is the alleged failure by the ICANN Board to providing "effective supervision or quality control" of the SSP: "If nobody but the evaluator has any insight into how the evaluation was carried out, no effective quality control can be performed."[62] Nor, according to Booking.com, does the quality review of the SSP's work supposedly performed by JAS Advisers (the independent consultant engaged by ICANN for this purpose) overcome the problem of a lack of transparency:

> *Booking.com is not aware that any selection process was put in place in relation to the appointment of JAS Advisors to perform the String Similarity Review quality control. No criteria for performing the quality control were published. When ICANN was looking for evaluators, no call for expressions of interest or similar document was issued for the selection of quality controllers.*[63]

78. In any case, says Booking.com, the "quality control review over a random sampling of applications to, among other things, test whether the process [set out in the Guidebook] was followed," which ICANN claims was performed on the SSP's work,[64] could not provide adequate quality control of the string similarity review process.[65] Finally, Booking.com argues that the arbitrary and unfair result of the string similarity review concerning .hotels – *i.e.,* the decision to place .hotels and .hoteis in contention – demonstrates that, "whatever quality control review ICANN may have engaged in …must therefore have been deficient."[66]

b. The case of .hotels

79. Booking.com argues, in part on the basis of expert evidence which it adduces in this IRP proceeding,[67] that "[t]here is no probability of user confusion if both .hotels and .hoteis were delegated as gTLD strings into the Internet root zone … The SSP could not have reasonably found that the average reasonable Internet user is likely to be confused between the two strings."[68] It continues:

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[61] Reply, ¶ 28-29.

[62] Reply, ¶ 30.

[63] Reply, ¶ 31. Booking.com states that it "doubts" that any quality review was in fact performed, whether by JAS Advisers or any other entity.

[64] Response, ¶ 30.

[65] Reply, ¶ 34.

[66] Reply, ¶ 38.

[67] Request, Annex 20, Expert Report of Prof. Dr. Piet Desmet of the Faculty of Arts, Department of Linguistics of Leuven University, dated 10 March 2014. Portions of the work underlying Prof. Desmet's report were performed by Dr. Emmanuel Keuleers, Research Fellow in the Department of Experimental Psychology at Ghent University.

[68] Request, ¶ 58.

> *Since .hotels and .hoteis are not confusingly similar, the determination that they are is contradictory to ICANN policy as established in the Applicant Guidebook. Acceptance of the determination, and repeated failure to remedy the wrongful determination, is a failure to act with due diligence and independent judgment, and a failure to neutrally and fairly apply established policies as required by Bylaws and Articles of Incorporation.*[69]

80. According to Booking.com, the Board should have acted to overturn the determination of the SSP either in the context of the Request for Reconsideration or under the authority accorded it by Module 5-4 of the Guidebook to "individually consider a gTLD application".[70]

81. Booking.com claims that its DIDP Request alerted the Board to the need to intervene to "correct the errors in the process" related to .hotels, and that its Request for Reconsideration of the SSP determination further informed the Board of the many errors in the SSP's review of .hotels, "giving the Board ample opportunity to correct those errors."[71] Booking.com claims that the Board's failure, when responding to the DIDP Request, "to offer any insight into the SSP's reasoning", its refusal to reconsider and overturn the SSP determination regarding .hotels on the sole ground (says Booking.com) that "the Reconsideration process 'is not available as a mechanism to re-try the decisions of evaluation panels'", and its failure to investigate Booking.com's complaints of a lack of fairness and transparency in the SSP process, constitute violations of ICANN's governing rules regarding string similarity review.[72]

82. According to Booking.com, among the most compelling evidence of ICANN's failure in this regard are the statements made on the record by several members of the NGPC during its 10 September 2013 meeting at which Booking.com's Request for Reconsideration was denied.[73] Given the importance that the Panel attaches to these statements, they are addressed in some detail in the Analysis in Part VI, below.

83. In its written submissions Booking.com asks the Panel to grant the following relief:

> *Finding that ICANN breached its Articles of Incorporation, its Bylaws, and the gTLD Applicant Guidebook;*
>
> *Requiring that ICANN reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set;*
>
> *Awarding Booking.com its costs in this proceeding; and*

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[69] Request, ¶ 59.

[70] Reply, ¶ 39.

[71] Reply, ¶ 41.

[72] Reply, ¶ 41. In the passage of Booking.com's submissions referred to here (as elsewhere), Booking.com speaks of violations of ICANN's obligations of "due process", which, it says, comprise concepts such as the right to be heard, the right to receive reasons for decisions, publicity, etc. For reasons explained in Part VI, below, the Panel prefers to use the terms *fairness* and *transparency* to connote the essence of ICANN's obligations under review in this IRP.

[73] See Part II.C, above.

> *Awarding such other relief as the Panel may find appropriate or Booking.com may request.*

84. At the hearing Booking.com *further* requested that the Panel not only require ICANN to disregard the SSP determination regarding .hotels/.hoteis, but also order ICANN to "delegate both .hotels and .hoteis."

B. ICANN's position

85. ICANN's position is best summed up by ICANN itself:

> *Booking.com's IRP Request is really about Booking.com's disagreement with the merits of the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar. But the Panel's determination does not constitute Board action, and the Independent Review Process is not available as a mechanism to re-try the decisions of an independent evaluation panel. The IRP Panel is tasked only with comparing contested actions of the ICANN Board to ICANN's Bylaws and Articles of Incorporation; it is not within the IRP Panel's mandate to evaluate whether the String Similarity Panel's conclusion that .hotels and .hoteis are confusingly similar was wrong.*[74]

86. According to ICANN, the Board "did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Guidebook."[75]

(i) The Panel's Authority

87. Throughout its submissions ICANN repeatedly stresses what it says is the very limited authority enjoyed by IRP panels.

88. As provided in Article IV, Section 3(4) of ICANN's Bylaws, ICANN observes that this Panel (as all IRP panels) is charged only with "comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws."[76]

89. ICANN notes that, in undertaking this *compare-and-declare* mission, the Panel is further constrained to apply the very specific "standard of review" set out in Bylaw Article IV, Section 3(4), which requires the Panel to focus on three particular questions: "did the Board act without conflict of interest in taking its decision?"; "did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?"; and "did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company [ICANN]?"[77]

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[74] Response, ¶ 9.

[75] Response, ¶ 8. Both parties agree that, as submitted by Booking.com, the "rules" at issue, against which the conduct of the ICANN Board is to be assessed, include the relevant provisions of the Guidebook.

[76] See for example Response, ¶2, ¶ 9.

[77] Response, ¶ 2.

90. ICANN further asserts that the IRP process "is not available as a mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved in ICANN activities,"[78] such as the action of the SSP which resulted in .hotels and .hoteis being placed in contention. Nor, says ICANN, may the IRP process be used as an "appeal mechanism" by which to overturn substantive decisions – such as the determination that .hotels and .hoteis are confusingly visually similar – with which an applicant may disagree.[79]

91. In this regard ICANN states that the affirmative relief sought by Booking.com – specifically, a declaration requiring that ICANN "reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set" and (as requested at the hearing) that ICANN "delegate both .hotels and .hoteis" – exceeds the authority of the Panel.[80]

(ii) ICANN's Response to Booking.com's Claims

a. The string similarity review process

92. According to ICANN, "[e]arly on in the iterations of the Guidebook, it was determined that, in the initial evaluation stage, the String Similarity Panel would only examine strings for visual confusion;" and "[i]f applied-for strings are determined to so nearly resemble each other visually that it is likely to deceive or cause confusion, the string will be placed in a contention set, which is then resolved pursuant to the contention set resolution processes in Module 4 of the Guidebook."[81]

93. According to ICANN, it was also determined early on that, as stated in Section 2.2.1.1 of the Guidebook, "[t]his similarity review will be conducted by an independent String Similarity Panel," not by ICANN itself. ICC was duly selected to perform the string similarity review further to "an open and public request for proposals," pursuant to which, as the successful bidder, "ICC was responsible for the development of its own process documents and methodology for performing the String Similarity Review consistent with the provisions of the Guidebook."[82] ICANN emphasizes that "the Guidebook does not provide for any process by which ICANN (or anyone else) may conduct a substantive review of ICC's results."[83]

94. In ICANN's submission, the alternative proposed by Booking.com, that "the ICANN Board – and the ICANN Board alone – was obligated to perform the String Similarity Review for the more than 1,900 new gTLD applications submitted," is "untenable and is not supported by ICANN's Bylaws or Articles."[84] As noted by ICANN, the Guidebook defines six distinct

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[78] Response, ¶ 3.

[79] Response, ¶ 49.

[80] Response, ¶ 55.

[81] Response, ¶ 15 (underlining in original).

[82] Response, ¶ 16.

[83] Response, ¶ 17.

[84] Sur-Reply, ¶ 7.

review processes that every gTLD application is required to go through, including string similarity review; each of those review processes was conducted by independent experts specifically engaged by ICANN staff for the purpose.

95. ICANN submits that "there simply is no requirement – under ICANN's governing documents or imposed by law – that would mandate that the ICANN Board inject itself into the day-to-day affairs of the evaluation process in the manner Booking.com proposes."[85] It asserts that, consistent with well-settled legal principles, "neither ICANN's Bylaws, nor the Articles, nor the Guidebook requires the ICANN Board to conduct any analysis of the decisions of third party experts retained to evaluate string similarity."[86]

96. Moreover, ICANN asserts that "[s]imply because the ICANN Board has the discretion [under Section 5.1 (Module 5-4) of the Guidebook] to consider individual applications does not mean it is required to do so or that it should do so, particularly at an initial evaluation stage."[87]

97. ICANN claims that that Booking.com's repeated invocation of the Board's so-called obligation to ensure "due process" in the administration of the New gTLD Program is misplaced. First, neither applicable California law nor any provision of the Bylaws, Articles of Incorporation or Guidebook "specifically affords any gTLD applicant a right to procedural 'due process' similar to that which is afforded in courts of law."[88] Second, because ICANN conducts its activities in the public interest it nevertheless provides "more opportunity for parties to be heard and to dispute actions taken"[89] than most private corporate entities. Third, the "decision to proceed with the New gTLD Program followed many years of discussion, debate and deliberation within the ICANN community, including participation from end users, civil society, technical experts, business groups, governments and others."[90] Fourth, and perhaps most importantly, "ICANN adhered to the policies and procedures articulated in its Bylaws, Articles of Incorporation, and the Guidebook, the latter of which was adopted only after being publicly vetted with ICANN's stakeholders and the broader Internet community."[91]

98. ICANN's response to Booking.com's various allegations regarding particular elements of the string similarity review process – including for example the selection of the SSP, the publication of the SSP's methodology, the anonymity of the individuals SSP members, the supposed lack of quality control – is essentially three-fold: first, the actions challenged by Booking.com are *not Board actions*, but actions of ICANN staff or third parties, which cannot

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[85] Sur-Reply, ¶ 10.

[86] Sur-Reply, ¶ 10.

[87] Sur-Reply, ¶ 11. It was established during the hearing that the several references to this discretionary authority in ICANN's written and oral submissions refer specifically to the authority conferred by Section 5.1 (Module 5-4) of the Guidebook.

[88] Sur-Reply, ¶ 18.

[89] Sur-Reply, ¶ 18.

[90] Sur-Reply, ¶ 18, fn 18.

[91] Sur-Reply, ¶ 18, fn 18.

be challenged by means of IRP proceedings; second, in any case, Booking.com's claims are *factually incorrect*, and there has been no violation of the Bylaws, Articles of Incorporation or Guidebook; third, Booking.com's claims are *time-barred* given that Article IV, Section 3(3) of the Bylaws requires that IRP requests "must be filed within thirty days of the posting of the minutes of the Board meeting … that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation."[92]

b. The case of .hotels

99. ICANN's position as regards the determination to place .hotels and .hoteis in contention is similar in many respects to its position regarding the string similarity review process generally. ICANN argues that the Board played no role whatsoever in performing the review of .hotels; that the SSP's determination was in any event well supported and there was no violation of applicable rules; and that the Guidebook does not provide for any process by which ICANN (or any other body, including an IRP panel) may conduct a substantive review of a string similarity determination.

100. In any event, ICANN asserts that .hotels and .hoteis in fact meet every one of the visual similarity criteria applied by the SSP, as set out in the SSP Manager's Letter. Moreover, .hotels and .hoteis scored a stunning 99% for visual similarity under the publicly available SWORD algorithm which, as provided by Section 2.2.1.1.2 (Module 2-7) of the Guidebook, establishes "one objective measure for consideration by the [SSP]". According to ICANN (in response to a question posed by the Panel during the hearing), this was the highest algorithmic score among the comparison of all non-identical pairs within the 1917 new gTLD applications received by ICANN;[93] the only other pair of non-exact match strings found to be confusingly visually similar – .unicorn and .unicom – scored only 94%.[94]

101. According to ICANN, "it was not clearly 'wrong,' as Booking.com argues, for the [SSP] to find that .hotels/.hoteis are confusingly similar.[95]

102. In conclusion, ICANN states that its conduct with respect to Booking.com's application for .hotels, including in evaluating Booking.com's Request for Reconsideration, was fully consistent with ICANN's Articles of Incorporation, its Bylaws and the procedures established in the Guidebook; and the fact that Booking.com disagrees with the SSP's determination to put .hotels and .hoteis in a contention set does not give rise to an IRP.

103. ICANN asks the Panel to deny Booking.com's IRP Request.

VI. ANALYSIS

A. The Panel's Authority

[92] Sur-Reply, ¶ 20-42.

[93] A number of these applications were subsequently withdrawn.

[94] Identical pairs, of course, received a score of 100% for visual similarity under the SWORD algorithm.

[95] Response, ¶ 53.

104. The jurisdiction and authority of an IRP panel is expressly prescribed – and expressly limited – by the ICANN Bylaws. To recap, Article IV, Section 3 of the Bylaws provides:

> *4. [The IRP Panel] shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:*
>
> *a. did the Board act without conflict of interest in taking its decision?;*
>
> *b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
>
> *c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company [ICANN]?*
>
> *[…]*
>
> *11. The IRP Panel shall have the authority to:*
>
> *[…]*
>
> *c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and*
>
> *d. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;*
>
> *[…]*
>
> *18. […] The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties […]*
>
> *[Underlining added]*

105. Similarly, Article 8 of the Supplementary Procedures reads:

> ***8. Standard of Review***
>
> *The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*
>
> *If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review.*

106. There is no dispute as regards the Panel's duty to compare the actions of the Board to ICANN's Articles of Incorporation and Bylaws (and, in this case, Guidebook) with a view to

declaring whether those actions are inconsistent with applicable policies. Where the parties disagree is with respect to the standard of review to be applied by the Panel in assessing Board conduct.

107. ICANN submits that its Bylaws "specify that a deferential standard of review be applied when evaluating the actions of the ICANN Board … the rules are clear that the appointed IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board."[96] Booking.com argues that this "is simply wrong. No such specification is made in ICANN's Bylaws or elsewhere, and a restrictive interpretation of the standard of review would … fail to ensure accountability on the part of ICANN and would be incompatible with ICANN's commitment to maintain (and improve) robust mechanisms for accountability."[97]

108. In the opinion of the Panel, there can be no question but that the provisions of the ICANN Bylaws establishing the Independent Review Process and defining the role of an IRP panel specify that the ICANN Board enjoys a large degree of discretion in its decisions and actions. So long as the Board acts without conflict of interest and with due care, it is entitled – indeed, required – to exercise its independent judgment in acting in what it believes to be the best interests of ICANN. The only substantive check on the conduct of the ICANN Board is that such conduct may not be inconsistent with the Articles of Incorporation or Bylaws – or, the parties agree, with the Guidebook. In that connection, the Panel notes that Article 1, Section 2 of the Bylaws also clearly states that in exercising its judgment, the Board (indeed "[a]ny ICANN body making a recommendation or decision") shall itself "determine which core values are most relevant and how they apply to the specific circumstances of the case at hand."

109. In other words, in making decisions the Board is required to conduct itself reasonably in what it considers to be ICANN's best interests; where it does so, the only question is whether its actions are or are not consistent with the Articles, Bylaws and, in this case, with the policies and procedures established in the Guidebook.

110. There is also no question but that the authority of an IRP panel to compare contested actions of the Board to the Articles of Incorporation and Bylaws, and to declare whether the Board has acted consistently with the Articles and Bylaws, does not extend to opining on the nature of those instruments. Nor, in this case, does our authority extend to opining on the nature of the policies or procedures established in the Guidebook. In this regard it is recalled that Booking.com itself repeatedly stresses that it does not contest the validity or fairness of the string similarity review process as set out in the Guidebook, but merely whether ICANN's actions were consistent with various elements of that process. Stated differently, our role in this IRP includes assessing whether the applicable rules – in this case, the rules regarding string similarity review – were followed, not whether such rules are appropriate or advisable.

111. Nevertheless, this does not mean that the IRP Panel may only review ICANN Board actions or inactions under the deferential standard advocated by ICANN in these proceedings. Rather, as explained below, the IRP Panel is charged with "objectively" determining whether

[96] Response, ¶ 24.

[97] Reply, ¶ 6.

or not the Board's actions are in fact consistent with the Articles, Bylaws and Guidebook, which the Panel understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness.

112. In the only other IRP of which the Panel is aware in which such questions were addressed in a published decision, the distinguished members of the IRP panel had this to say about the role of an IRP panel, and the applicable standard of review, in appraising Board action:

> *The Internet Corporation for Assigned Names and Numbers is a not-for profit corporation established under the law of the State of California. That law embodies the 'business judgment rule'. Section 309 of the California Corporations Code provides that a director must act 'in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders…' and shields from liability directors who follow its provisions. However ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN. In 'recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization' – including ICANN -- ICANN is charged with 'promoting the global public interest in the operational stability of the Internet…' ICANN 'shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law…' Thus, while a California corporation, it is governed particularly by the terms of its Articles of Incorporation and Bylaws, as the law of California allows. Those Articles and Bylaws, which require ICANN to carry out its activities in conformity with relevant principles of international law, do not specify or imply that the International [sic] Review Process provided for shall (or shall not) accord deference to the decisions of the ICANN Board. The fact that the Board is empowered to exercise its judgment in the application of ICANN's sometimes competing core values does not necessarily import that that judgment must be treated deferentially by the IRP. In the view of the Panel, the judgments of the ICANN Board are to be reviewed and appraised by the Panel objectively, not deferentially. The business judgment rule of the law of California, applicable to directors of California corporations, profit and nonprofit, in the case of ICANN is to be treated as a default rule that might be called upon in the absence of relevant provisions of ICANN's Articles and Bylaws and of specific representations of ICANN … that bear on the propriety of its conduct. In the instant case, it is those Articles and Bylaws, and those representations, measured against the facts as the Panel finds them, which are determinative.*[98]
>
> *[Underlining added.]*

113. While on no way bound by that decision, we agree with its conclusions in this respect.

114. At the end of the day we fail to see any significant difference between the parties' positions in this regard. The process is clear, and both parties acknowledge, that the Panel is tasked with determining whether or not the Board's actions are consistent with ICANN's Articles of Incorporation, Bylaws and the Guidebook. Such a determination calls for what the panel in

[98] ICDR Case No. 50 117 T 00224 08, *ICM Registry, LLC* v. *ICANN*, Declaration dated 19 February 2010 ("*ICM Registry*"), ¶ 136.

the *ICM Registry* matter called an "objective" appraisal of Board conduct as measured against the policies and rules set out in those instruments; all agree that it is the Articles, Bylaws and Guidebook which are determinative.

115. That being said, we also agree with ICANN to the extent that, in determining the consistency of Board action with the Articles, Bylaws and Guidebook, an "IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board." In other words, it is not for the Panel to opine on whether the Board could have acted differently than it did; rather, our role is to assess whether the Board's action was consistent with applicable rules found in the Articles, Bylaws and Guidebook. Nor, as stated, is it for us to purport to appraise the policies and procedures established by ICANN in the Guidebook (since, again, this IRP is not a challenge to those policies and procedures themselves[99]), but merely to apply them to the facts.

116. With the foregoing firmly in mind, the Panel turns now to the issues to be determined in order to resolve the present dispute.

B. The String Similarity Review Process

117. The Panel is not unsympathetic to Booking.com's complaints regarding the string similarity review process as established by the Guidebook. There is no question but that that process lacks certain elements of transparency and certain practices that are widely associated with requirements of fairness. For example, the Guidebook provides no means for applicants to provide evidence or make submissions to the SSP (or any other ICANN body) and so be fully "heard" on the substantive question of the similarity of their applied-for gTLD strings to others.

118. Indeed, as stated at the outset of this Declaration, these observations and the concerns that they engender were voiced by several members of the ICANN Board's New gTLD Program Committee which voted to accept the BGC's Recommendation to deny Booking.com's Request for Reconsideration. The Panel can do no better than reproduce the statements made by the NGPC members in this respect, as recorded in the minutes of the NGPC's 10 September 2013 meeting:[100]

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[99] As discussed in more detail in the following section (at para. 117 and following) and again at Part IV of this Declaration, the important questions that Booking.com highlights in its pleadings, as to whether the string similarity review process is consistent with ICANN's guiding principles of transparency and fairness, and regarding the published views of various members of ICANN's NGPC in this respect, are matters which the ICANN Board, in its discretion, may wish to consider on its own motion in the context of the present case, in accordance with its authority under Section 5.1 (Module 5-4) of the Guidebook, or when it issues the Guidebook for round two of the New gTLD Program. Those questions include a lack of clarity surrounding the way in which the string similarity review is conducted by the SSP, and the absence of any means for applicants to be heard in the string similarity review process where they may have evidence to adduce or arguments to make (such as the evidence and arguments presented by Booking.com to this Panel), which could in fact be relevant to the SSP's determination.

[100] Request, Annex 16.

- Mr. George Sadowski stated his intention to abstain from the vote because, although "he understood that the BGC did the right thing, [he] thought the end result that was contrary to ICANN's … and the user's best interests."

- Ms. Olga Madruga-Forti also stated her intention to abstain from voting on the BGC recommendation "because there was not sufficient rationale provided for why the string similarity review panel made its determination."

- In response to a comment by the Chair that the Request for Reconsideration deserved to be denied "[b]ecause the process was followed," Mr. Ray Plzak "agreed that the process was followed, but noted that the process needs to be reviewed to potentially add a mechanism that would allow persons who don't agree with the outcome to make an objection, other than using a Reconsideration Request."

- Mr. Plzak "recommended the Committee send a strong signal to the BGC, or adopt a resolution recommending that the BGC consider development of a different mechanism to provide an avenue for the community to appeal the outcome of a decision based on the merits."

- Ms. Madruga-Forti agreed and "recommended that in the future, a remand or appeals mechanism may help alleviate the concerns noted."

- Mr. Bill Graham also agreed with Mr. Plzak's suggestion, and noted that "generally, there is a considerable level of discomfort and dissatisfaction with the process as expressed by Committee members."

- The Chair "agreed with [Mr. Graham's] sentiment."

- The General Counsel and Secretary noted that ICANN … "has tried to encourage more use of the ombudsman, or other accountability mechanisms for these types of concerns."

119. Ultimately, five members of the NGPC voted in favour of the resolution accepting the BGC's Recommendation; two members were unavailable to vote; and four members abstained. The abstaining members offered the following voting statements:

- Mr. Plzak stated that he abstained from voting "because he is disappointed in what is being done to remedy the situation. [He] would like to see more resolve to fix the process."

- Ms. Madruga-Forti stated that:

> *[T]he BGC has done an appropriate job of applying a limited review standard to the application for reconsideration, but unfortunately, in this circumstance, to apply that limited review accompanied by a lack of information regarding the rationale of the string similarity review panel is not possible in a logical and fair manner. The public interest would not be served by applying the limited review standard without proper information on the basis and reasoning for the decision of the panel. In my opinion, the public interest would be better served by abstaining and continuing to explore ways to*

establish a better record of the rationale of the string similarity review panel in circumstances such as this.

- Mr. Kuo-Wei Wu agreed with Ms. Madruga-Forti's and Mr. Plzak's voting statements.
- Mr. Sadowsky provided the following detailed statement:

I have a strong concern regarding the ratification of the BGC recommendation to deny the reconsideration request regarding string contention between .hoteis and .hotels, and I therefore have therefore abstained when the vote on this issue was taken.

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process. As such, it can be useful, but it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the … community and/or Internet users in general.

The rationale underlying the rejection of the reconsideration claim is essentially that the string similarity process found that there was likely to be substantial confusion between the two, and that therefore they belonged in a contention set. Furthermore, no process has been identified as having been violated and therefore there is nothing to reconsider. As a Board member who is aware of ICANN's … Bylaws, I cannot vote against the motion to deny reconsideration. The motion appears to be correct based upon the criteria in the Bylaws that define the reconsideration process and the facts in this particular case. However, I am increasingly disturbed by the growing sequence of decisions that are based upon a criterion for user confusion that, in my opinion, is not only both incomplete and flawed, but appears to work directly against the concept that users should not be confused. I am persuaded by the argument made by the proponents of reconsideration in this case that users will in fact not be confused by .hoteis and .hotels, since if they enter the wrong name, they are very likely to be immediately confronted by information in a language that they did not anticipate.

Confusion is a perceptual issue. String similarity is only one consideration in thinking about perceptual confusion and in fact it is not always an issue. In my opinion, much more perceptual confusion will arise between .hotel and .hotels than between .hotels and .hoteis. Yet if we adhere strictly to the Guidebook and whatever instructions have or have not been given to string similarity experts, it is my position that we work against implementing decisions that assist in avoiding user confusion, and we work in favor of decisions that are based upon an incorrect, incomplete and flawed ex ante analysis of the ICANN Network real issues with respect to user confusion.

The goal of the string similarity process is the minimization of user confusion and ensuring user trust in using the DNS ... The string similarity exercise is one of the means in the new gTLD … process to minimize such confusion and to strengthen user trust. In placing our emphasis, and in fact our decisions, on string similarity only, we are unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.

I cannot and will not vote in favor of a motion that reflects, directly or indirectly, an unwillingness to depart from what I see as such a flawed position and which does not reflect In my opinion an understanding of the current reality of the situation.

120. These statements reflect to an important degree the Panel's own analysis.

121. The elements of the string similarity review process were established and widely published several years ago, after extensive consultation and debate among ICANN stakeholders and the Internet community. Booking.com correctly describes the process established (or "crystallized") in the Guidebook as a component of "a consensus policy" concerning the introduction of new gTLDs.[101]

122. The Guidebook makes clear that, as part of the initial evaluation to which all applied-for gTLDs are subject, each string would be reviewed for a number of factors, one of which is "string similarity", which involves a determination of "whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion"[102]. The term "user" is elaborated elsewhere in the Guidebook, which speaks of confusion arising "in the mind of the average, reasonable Internet user."[103]

123. The Guidebook explains that string similarity review comprises merely a "visual similarity check",[104] with a view to identifying only "visual string similarities that would create a probability of user confusion."[105]

124. The Guidebook makes clear that string similarity reviews would be conducted by an independent third party – the SSP – that would have wide (though not complete) discretion both in formulating its methodology and in determining string similarity on the basis of that methodology.

125. Section 2.2.1.1.2 of the Guidebook, titled "Review Methodology", provides that the SSP "is informed in part by an algorithmic score for ... visual similarity," which "will provide one objective measure for consideration by the [SSP]." Section 2.2.1.1.2 further states that, in addition to "examin[ing] all the algorithm data," the SSP will "perform its own review of similarities between strings and whether they rise to the level of string confusion." It is noted that the objective algorithmic score is to be treated as "only indicative". Crucially, "the final determination of similarity is entirely up to the [SSP's] judgment." (Underlining added)

126. In sum, the Guidebook calls for the SSP to determine whether two strings are so "visually similar" as to create a "probability of confusion" in the mind of an "average, reasonable Internet user." In making this determination, the SSP is informed by an "algorithmic score", to ensure that the process comprises at least one "objective measure". However, the algorithmic score is not determinative. The SSP also develops and performs "its own review". At the end of the day, the determination is entirely a matter of "the [SSP's] judgment."

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[101] Request, ¶ 13.

[102] Guidebook, §2.2 (Module 2-4).

[103] Guidebook, §2.2.1.1.2. (Underlining added)

[104] Guidebook, §2.2.1.1. (Underlining added)

[105] Guidebook, §2.2.1.1.1. (Underlining added)

127. By its very nature this process is highly discretionary. It is also, to an important degree, subjective. The Guidebook provides no definition of "visual similarity", nor any indication of how such similarity is to be objectively measured other than by means of the SWORD algorithm. The Guidebook provides no definition of "confusion," nor any definition or description of an "average, reasonable Internet user." As Mr. Sadowski of the NGPC put it: "Confusion is a perceptual issue." (Mr. Sadowski further noted: "String similarity is only one consideration in thinking about perceptual confusion, and in fact it is not always an issue.) The Guidebook mandates the SSP to develop and apply "its own review" of visual similarity and "whether similarities rise to the level of user confusion", in addition to SWORD algorithm, which is intended to be merely "indicative", yet provides no substantive guidelines in this respect.

128. Nor does the process as it exists provide for gTLD applicants to benefit from the sort of procedural mechanisms – for example, to inform the SSP's review, to receive reasoned determinations from the SSP, or to appeal the merits of those determinations – which Booking.com claims are required under the applicable rules. Clearly, certain ICANN NGPC members themselves consider that such input would be desirable and that changes to the process are required in order for the string similarity review process to attain its true goal, which Mr. Sadowsky referred to as "the minimization of user confusion and ensuring user trust in using the DNS". However, as even the abstaining members of the NGPC conceded, the fact is that the sort of mechanisms that Booking.com asserts are required (and which those NGPC members believe should be required) are simply not part of the string similarity review process as currently established. As to whether they *should* be, it is not our place to express an opinion, though we note that such additional mechanisms surely would be consistent with the principles of transparency and fairness.

129. We add that we agree with ICANN that the time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com's claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN's Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws. As ICANN expressed during the hearing, if Booking.com believed that there were problems with the Guidebook, it should have objected at the time the Guidebook was first implemented.

130. When asked during the hearing about its failure to object timely, Booking.com argued that it could not have known how the Board's actions – that is, how the process established in the Guidebook – would affect it prior to the submission of its application for .hotels. However, that is not a persuasive or meritorious answer. As did all stakeholders, Booking.com had the opportunity to challenge the Board's adoption of the Guidebook, at the time, if it considered any of its elements to be inconsistent with ICANN's Articles of Incorporation or Bylaws.

C. The Case of .hotels

131. In the light of the preceding analysis of Booking.com's challenge concerning the ICANN Board's actions in relation to the string similarity review process generally, the Panel is not

persuaded by its challenge concerning the Board's conduct in relation to the review of .hotels specifically.

132. There are two principal elements to this part of Booking.com's case: a challenge in relation to the process followed by the SSP; and a challenge in relation to the Board's handling of Booking.com's Request for Reconsideration of the SSP's determination. However, the fundamental obstacle to Booking.com's case is that *the established process was followed* in all respects.

133. Booking.com itself acknowledges that "the process was followed" by the SSP, which determined that .hotels and .hoteis were so visually similar as to warrant being placed in a contention set. So too did all of the NGPC members who commented on the matter recognize that "the process was followed" – for all their stated misgivings concerning the outcome of the process.

134. The same is true of the Request for Reconsideration. The Panel is struck by the extent and thoughtfulness not only of the NGPC's consideration of the issue, certain aspects of which are discussed above, but of the BGC's detailed analysis and its Recommendation to the NGPC, on the basis of which Booking.com's Request for Reconsideration was denied. Contrary to Booking.com's allegations, in neither instance was this merely a blind acceptance of a decision of a subordinate body. In fact, the reconsideration process itself, however limited and perhaps imperfect it may be, is inconsistent with Booking.com's claims of lack of "due process".

135. Although not addressed in great detail by the parties, the Panel considers several observations made by the BGC in its 1 August 2013 Recommendation to be particularly apposite:

> ▪ *These standing requirements [for Requests for Reconsideration] are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff [or the Board] acted in contravention of established policies.*[106]
>
> ▪ *Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision.*[107]
>
> ▪ *Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the [SSP] decision on placing .hotels and .hoteis in contention sets. Instead, Booking.com is supplanting what it believes the review*

[106] BGC Recommendation, p. 2.

[107] BGC Recommendation, p. 4. The BGC explains that "Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC's analysis and recommendation below would not change."

methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology, Booking.com is asking the BGC (and the Board through the New gTLD Program Committee (NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the decision. In the context of the New gTLD Program, the Reconsideration process is not however intended for the Board to perform a substantive review of [SSP] decisions. While Booking.com may have multiple reasons as to why it believes that its application for .hotels should not be in contention set with .hoteis, Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.[108]

- *Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that "it is contrary to ICANN policy to put them in a contention set." (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the [SSP]. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.*[109]

- *Booking.com argues that the contention set decision was taken without material information, including Booking.com's linguistic expert's opinion, or other "information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis.'" (Request, page 7.) However, there is no process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).)*[110]

- *Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com's call for further information on the decision to place .hotels and .hoteis in a contention set … is similarly not rooted in any established ICANN process at issue.[…] While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.*[111]

- *[W]hile we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the [SSP's] decision, no such narrative is called for in the process.*[112]

- *The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the [SSP] in applying the methodology*

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[108] BGC Recommendation, p. 5.

[109] BGC Recommendation, p. 6.

[110] BGC Recommendation, p. 6.

[111] BGC Recommendation, pp. 6-7.

[112] BGC Recommendation, p. 7.

> *set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of [SSP's] reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).*[113]
>
> ▪ *The [SSP] reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the [SSP], ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the [SSP] considered its output as "advice" to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as "advice" or "outcomes" or "reports", the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and different process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.*[114]
>
> ▪ *As there is no indication that either the [SSP] or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hoteis in a non-exact contention set, this Request should not proceed.*[115]

136. These excerpts of the BGC Recommendation not only illustrate the seriousness with which Booking.com's Request for Reconsideration was heard, they mirror considerations to which we fully subscribe and which we find apply as well, with equal force and effect, in the context of Booking.com's IRP Request.

137. It simply cannot be said – indeed, it is not even alleged by Booking.com – that the established process was not followed by the ICANN Board or any third party either in the initial string similarity review of .hotels or in the reconsideration process.

138. Booking.com was asked at the hearing to identify *with particularity* the ICANN Board's actions (including inactions) in this case that it claims are inconsistent with ICANN's Articles of Incorporation, Bylaws or the Guidebook and regarding which it asks the Panel to render a declaration. It identified four:

- The Board's adoption of certain provisions of the Guidebook, including the allegedly ill-defined, unfair and non-transparent procedures for selecting the SSP and supervising the SSP's performance of the string similarity review process. As discussed, any claims in this regard are time-barred.

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[113] BGC Recommendation, p. 7.

[114] BGC Recommendation, p. 8.

[115] BGC Recommendation, p. 10.

- The Board's acceptance of the SSP determination. As ICANN argues, there was no action (or inaction) by the Board here, no decision made (or not made) by the Board or any other body to accept the SSP's determination. The Guidebook provides that applied-for strings "*will* be placed in contention set" where the SSP determines the existence of visual similarity likely to give rise to user confusion. Simply put, under the Guidebook the Board is neither required nor entitled to intervene at this stage to accept or not accept the SSP's determination. Booking.com is correct that the Board could nevertheless have stepped in and reversed the SSP determination under Section 5.1 (Module 5-4) of the Guidebook, but did not do so; that inaction is addressed below.

- The Board's denial of Booking.com's Request for Reconsideration. As discussed above, there is nothing in the evidence that even remotely suggests that ICANN's conduct in this regard was inconsistent with its Articles, Bylaws or the Guidebook. On the contrary, we have already stated that the detailed analysis performed by the BGC and the extensive consideration of the BGC Recommendation by the NGCP undermine any claim that ICANN failed to exercise due care and independent judgment, or that its handling of the Request for Reconsideration was inconsistent with applicable rules or policy. As discussed above, just as in the present IRP, the question in the reconsideration process is whether the established process was followed. This was the question that the BGC and NGPC asked themselves in considering Booking.com's Request for Reconsideration, and which they properly answered in the affirmative in denying Booking.com's request.

- The Board's refusal to "step in" and exercise its authority under Section 5.1 (Module 5-4) of the Guidebook to "individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community." As pointed out by ICANN during the hearing, the fact that the ICANN Board enjoys such discretion and may choose to exercise it any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by Booking.com. In any case, the Panel does not believe that the Board's inaction in this respect was inconsistent with ICANN's Articles of Incorporation or Bylaws or indeed with ICANN's guiding principles of transparency and fairness, given (1) Booking.com's concession that the string similarity review process was followed; (2) the indisputable conclusion that any challenge to the adoption of the SSP process itself is time-barred; (3) the manifestly thoughtful consideration given to Booking.com's Request for Reconsideration by the BGC; and (4), the fact that, notwithstanding its protestations to the contrary, Booking.com's real dispute seems to be with the process itself rather than how the process was applied in this case (given that, as noted, Booking.com concedes that the process was indeed followed).

139. The Panel further considers that these – in addition to any and all other potential (and allegedly reviewable) actions identified by Booking.com during the course of these proceedings – fail on the basis of Booking.com's dual acknowledgement that it does not challenge the validity or fairness of the string similarity review process, and that that process was duly followed in this case.

140. Finally, the panel notes that Booking.com's claim – largely muted during the hearing – regarding alleged "discrimination" as regards the treatment of its application for .hotels also founders on the same ground. Booking.com acknowledges that the established string similarity review process was followed; and there is absolutely no evidence whatsoever that .hotels was treated any differently than any other applied-for gTLD string in this respect. The mere fact that the *result* of the string similarity review of .hotels differed from the results of the reviews of the vast majority of other applied-for strings does not suggest discriminatory treatment. In any event, the Panel cannot but note the obvious, which is that .hotels is not alone in having been placed in contention by the SSP. So too was .hoteis; and so too were .unicom and .unicorn. Moreover, and once again, it is recalled that Booking.com does not claim to challenge the merits of the string similarity review, that is, the determination that .hotels and .hoteis are so visually similar as to warrant placement in a contention set.

D. Conclusion

141. In launching this IRP, Booking.com no doubt realized that it faced an uphill battle. The very limited nature of IRP proceedings is such that any IRP applicant will face significant obstacles in establishing that the ICANN Board acted inconsistently with ICANN's Articles of Incorporation or Bylaws. In fact, Booking.com acknowledges those obstacles, albeit inconsistently and at times indirectly.

142. Booking.com purports to challenge "the way in which the [string similarity review] process was established, implemented and supervised by (or under the authority of) the ICANN Board"; yet it also claims that it *does not challenge the validity or fairness of the string similarity review process as set out in the Guidebook.* It asks the Panel to overturn the SSP's determination in this case and to substitute an alternate result, in part on the basis of its own "expert evidence" regarding similarity and the probability of user confusion as between .hotels and .hoteis; yet it claims that it *does not challenge the merits of* the SSP determination and it acknowledges that *the process set out in the Guidebook was duly followed* in the case of its application for .hotels.

143. In sum, Booking.com has failed to overcome the very obstacles that it recognizes exist.

144. The Panel finds that Booking.com has failed to identify any instance of Board action or inaction, including any action or inaction of ICANN staff or a third party (such as ICC, acting as the SSP), that could be considered to be inconsistent with ICANN's Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook. This includes the challenged actions of the Board (or any staff or third party) in relation to what Booking.com calls the implementation and supervision of the string similarity review process generally, as well as the challenged actions of the Board (or any staff or third party) in relation to the string similarity review of .hotels in particular.

145. More particularly, the Panel finds that the string similarity review performed in the case of .hotels was not inconsistent with the Articles or Bylaws or with what Booking.com refers to as the "applicable rules" as set out in the Guidebook.

146. To the extent that the Board's adoption and implementation of specific elements of the new gTLD Program and Guidebook, including the string similarity review process, could

potentially be said to be inconsistent with the principles of transparency or fairness that underlie ICANN's Articles and Incorporation and Bylaws (which the Panel does not say is the case), the time to challenge such action has long since passed.

147. Booking.com's IRP Request must be denied.

VII. THE PREVAILING PARTY; COSTS

148. Article IV, Section 3(18) of the Bylaws requires that the Panel "specifically designate the prevailing party." This designation is germane to the allocation of costs, given that Article IV, Section 3(18) provides that the "party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider."

149. The same provision of the Bylaws also states that "in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses."

150. Similarly, the Supplementary Procedures state, at Article 11:

> *The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the*
>
> *prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.*
>
> *In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.*

151. The "IRP Provider" is the ICDR, and, in accordance with the ICDR Rules, the costs to be allocated between the parties – what the Bylaws call the "costs of the IRP Provider", and the Supplementary Procedures call the "costs of the proceedings" – include the fees and expenses of the Panel members and of the ICDR (we refer to all of these costs as "**IRP costs**").

152. ICANN is undoubtedly the prevailing party in this case. That being said, the Panel considers that the nature and significance of the issues raised by Booking.com, and the contribution to the "public interest" of its submissions, are such that it is appropriate and reasonable that the IRP costs be shared equally by the parties. We consider that the extraordinary circumstances of case – in which some members of ICANN's New gTLD Program Committee have publicly declared that, in their view, the rules on the basis of which Booking.com's claims fail should be reconsidered by ICANN – warrants such a holding.

153. The Panel cannot grant Booking.com the relief that it seeks. A panel such as ours can only declare whether, on the facts as we find them, the challenged actions of ICANN are

or are not inconsistent with ICANN's Articles of Incorporation and Bylaws. We have found that the actions in question are not inconsistent with those instruments. The process established by ICANN under its Articles of Incorporation and Bylaws and set out in the Guidebook was followed, and the time to challenge that process (which Booking.com asserts is not its intention in these proceedings in any event) has long passed.

154. However, we can – and we do – acknowledge certain legitimate concerns regarding the string similarity review process raised by Booking.com, discussed above, which are evidently shared by a number of prominent and experienced ICANN NGPC members. And we can, and do, encourage ICANN to consider whether it wishes to address these issues in an appropriate manner and forum, for example, when drafting the Guidebook for round two of the New gTLD Program or, more immediately, in the exercise of its authority under Section 5.1 (Module 5-4) of the Guidebook (which it may choose to exercise at any time, in its discretion) to consider whether, notwithstanding the result of the string similarity review of .hotels and .hoteis, approval of both of Booking.com's and Despegar's proposed strings would be in the best interest of the Internet community.

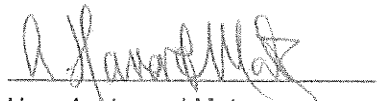
FOR THE FOREGOING REASONS, the Panel hereby declares:

(1) Booking.com's IRP Request is denied;

(2) ICANN is the prevailing party;

(3) In view of the circumstances, each party shall bear one-half of the costs of the IRP Provider, including the fees and expenses of the Panel members and the fees and expenses of the ICDR. As a result, the administrative fees and expenses of the ICDR, totaling US$4,600.00, as well as the compensation and expenses of the Panelists totaling US$163,010.05 are to be borne equally. Therefore, ICANN shall pay to Booking.com the amount of US$2,300.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Booking.com

(4) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.



Hon. A. Howard Matz
Date: March 2, 2015

David H, Bernstein
Date:

Stephen L. Drymer,
Chair of the IRP Panel
Date:

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

March 2, 2015
Date

Hon. A. Howard Matz

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Stephen L. Drymer

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David H, Bernstein
Date: March 2, 2015

Stephen L. Drymer,
Chair of the IRP Panel
Date:

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Hon. A. Howard Matz

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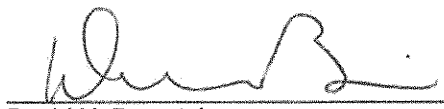
March 2, 2015
Date



David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Stephen L. Drymer

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Hon. A. Howard Matz
Date:

David H, Bernstein
Date:

Stephen L. Drymer,
Chair of the IRP Panel
Date: 3 March 2015

I, Hon. A. Howard Matz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

Hon. A. Howard Matz

I, David H, Bernstein, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

Date

David H, Bernstein

I, Stephen L. Drymer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Final Declaration of the IRP Panel.

3 March 2015

Date

Stephen L. Drymer

Ex. R-36

RESPONDENT'S EXHIBIT

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

World Intellectual Property Organization
Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections
("WIPO Rules for New gTLD Dispute Resolution")

(In effect as of June 20, 2011)

1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article 4 of the New gTLD Dispute Resolution Procedure ("Procedure"), provided as an Attachment to Module 3 of the gTLD Applicant Guidebook ("Applicant Guidebook") (v. 2012-01-11) approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on June 20, 2011 and as updated on January 11, 2012. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections (as referred to in Articles 2 and 4 of the Procedure) arising from Applications under ICANN's New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted (as referred to in Article 23(b) of the Procedure).

2. Definitions

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

3. Communications

(a) Subject to Article 6 of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center ("Center"), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made by electronic mail (email) using *lro@wipo.int*.

(b) In the event a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then determine whether to accept the non-electronic submission. After Panel appointment, parties are referred to Article 6(a) of the Procedure.

4. Submission of Objection and Response

(a) In accordance with Articles 7 and 8 of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex A hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

(b) In accordance with Article 11 of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex C hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

5. Center Review of Objections

(a) In accordance with Article 9 of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article 14 of the Procedure and Paragraph 10 of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article 9(d) of the Procedure and Paragraph 5(a) of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

6. Appointment of Case Manager

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

7. Consolidation

(a) In accordance with Article 12 of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render an individual Expert Determination for each Objection.

(b) A party may submit a consolidation request pursuant to Article 12(b) of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex D hereto and posted on the Center's website.

(d) Pursuant to Article 12 of the Procedure, in weighing the benefits that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

(i) Whether the Objections concern the same or similar TLD(s);

(ii) Whether the same Objector files Objections concerning multiple TLD applications;

(iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);

(iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;

(v) Any other arguments raised in any consolidation request, or opposition thereto;

(vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

8. Panel Appointment Procedures

(a) The Center will maintain and publish on its website a publicly-available List of Experts who may be available for Panel appointment.

(b) Pursuant to Article 13(b)(ii) of the Procedure, there shall be a single-member Panel unless all the Parties agree to the appointment of a three-member Panel.

(c) In the event of a single-member Panel, the Center shall in its sole discretion appoint a single-member Panel from its List of Experts.

(d) In the event all the Parties agree to the appointment of a three-member Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article 11 of the Procedure and Paragraph 4(b) of the WIPO Rules for New gTLD Dispute Resolution.

(i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a three-member Panel, within five (5) days of such communication each party shall separately submit to the Center (notwithstanding Article 6(b) of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Panelist. In the event none of a party's three (3) candidates is available for appointment as a Co-Panelist, the Center shall appoint the Co-Panelist in its sole discretion.

(ii) In the event of consolidation in accordance with Paragraph 7 of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants, as the case may be, shall jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a three-member Panel, the Center shall in its sole discretion appoint the Co-Panelist.

(iii) The third Panelist, who shall be the Presiding Panelist, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Panelist shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.

(iv) Where any party fails to indicate its order of preference for the Presiding Panelist to the Center, the Center shall nevertheless proceed to appoint the Presiding Panelist in its sole discretion, taking into account any preferences of any other party.

9. Expert Impartiality and Independence

(a) In accordance with Article 13(c) of the Procedure, any prospective Panelist shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to his/her impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex E hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to a Panelist's impartiality or independence, the Panelist shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge the appointment of a Panelist if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge a Panelist whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

(i) A party challenging a Panelist shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Panelist's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Panelist's impartiality or independence.

(ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of a Panelist's removal, the Center shall appoint a new Panelist in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

10. Fees

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex D hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

11. Confidentiality

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article 6(b) of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

12. Mediation

Further to Article 16 of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the WIPO Mediation Rules shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

13. Effect of Court Proceedings

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

14. Termination

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

15. Amendments

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

16. Exclusion of Liability

Except in respect of deliberate wrongdoing, a Panelist, the World Intellectual Property Organization and its staff shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.

Ex. R-37

RESPONDENT'S EXHIBIT

WIPO | ADR
Arbitration
and Mediation
Center

November 20, 2013

Dear Members of the Board Governance Committee,

The Reconsideration Request of November 14, 2013 filed with ICANN by GCCIX, W.L.L., gTLD Applicant and Respondent in the terminated Legal Rights Objection proceeding concerning <.gcc> administered by the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO Center), has come to the WIPO Center's attention.

Without commenting here on any other aspect of GCCIX, W.L.L.'s Reconsideration Request, the WIPO Center notes that the Reconsideration Request is incorrect in asserting that "expert panelist fees [...] have not been refunded."

The WIPO Center refunded the panel fees to GCCIX, W.L.L. on September 17, 2013. (Likewise, the Objector received back the panel fees which it had paid.) At that time, the WIPO Center informed GCCIX, W.L.L. of such refund.

So that the record may reflect the above, the WIPO Center requests ICANN to post the present communication in connection with GCCIX, W.L.L.'s Reconsideration Request. A copy of the present communication is forwarded to the parties in the terminated proceeding.

Yours sincerely,

WIPO Arbitration and Mediation Center

34, chemin des Colombettes
1211 Geneva 20, Switzerland
T +4122 338 82 47 F +4122 740 37 00
www.wipo.int/amc

Ex. R-38

RESPONDENT'S EXHIBIT

ICANN | GNSO

Generic Names Supporting Organization

Search

Acronym helper

Group Activities

Calendar
Active Projects
EPDP Temporary Specification for gTLD Registration Data – Phase 1
EPDP Temporary Specification for gTLD Registration Data – Phase 2
EPDP Temporary Specification for gTLD Registration Data – Phase 2A
PDP New gTLD Subsequent Procedures
PDP Review of All Rights Protection Mechanisms in All gTLDs
PDP IGO-INGO Access to Curative

Rights Protection Mechanisms
PDP Protection of IGO and INGO Identifiers in All gTLDs
PDP Privacy & Proxy Services Accreditation Issues
PDP Translation and Transliteration of Contact Information
PDP Transfer Policy Review
EPDP Internationalized Domain Names
EPDP on Specific Curative Rights Protections for IGOs

Other Activities
Mailing Lists
Projects List
Completed Projects

Translate

Select Language

Tweets by ICANN_GNSO

PDP Protection of IGO and INGO Identifiers in All gTLDs

Last Updated: 24 September 2020

Please note that the documents linked below related to the PDP are provided for informational purposes. Some documents are produced by the GNSO and others are not. To learn about the materials on the Active Project pages, please see this overview.

Background

Issues related to whether certain international organizations such as International Governmental Organizations (IGOs), the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC) should receive special protection for their names at the top-level and second-level in new gTLDs have been raised throughout the development of the New gTLD program. All these organizations perform important public interest or humanitarian work. They have reported that cybersquatting and related abuse of domain names (e.g., domain names that are identical or confusingly similar to the organizations' names and acronyms) could significantly impact their missions and resources.

To explore the issue in detail, the ICANN Board requested policy advice from the GNSO Council and the Governmental Advisory Committee

(GAC) on whether special protections should be afforded to the RCRC, IOC and/or IGOs. Prior to the PDP documented on this page, the GNSO Council formed a Drafting Team to review the issues of protection for RCRC and the IOC. Based on the recommendations of their Final Report and the Final Issue Report prepared by ICANN staff, the GNSO Council launched this PDP in October 2012.

Along with IGOs, the PDP scope included all INGOs (in addition to the RCRC and IOC). The aim was to consider what the appropriate form and scope of protections would be at both the top-level and second-level of the Domain Name System (DNS) for IGOs and INGOs. The PDP completed its work in November 2013, and the GNSO Council approved all the PDP consensus recommendations.

In April 2014, the ICANN Board adopted those PDP recommendations that were "not inconsistent" with GAC advice received on the topic, and requested more time to consider the remaining inconsistent recommendations. The adopted recommendations relate to full names and not acronyms; viz. protection at the top- and second-level for specific identifiers associated with the RCRC and IOC, and IGO full names (with an Exception Procedure to be designed for the affected organizations), and a 90-day Claims Notification process at the second level for certain INGO full names. These recommendations were subsequently implemented with a Policy Effective date of 1 August 2018.

A facilitated dialogue took place between representatives of the GAC and the GNSO at ICANN58 in an attempt to reconcile the remaining inconsistencies between GAC advice and the GNSO PDP recommendations. Those inconsistencies concerned IGO and specific RCRC acronyms as well as the names of all the National Societies of the Red Cross movement.

Following that facilitated discussion, the ICANN Board requested that the GNSO Council consider initiating the GNSO policy amendment process in accordance with the GNSO's procedures. In May 2017, the GNSO Council launched the policy amendment process for the Red Cross National Society names and reconvened the original PDP working group.

The working group developed a finite, limited list of specific names of 191 Red Cross Red Crescent National Societies as well as a limited, defined set of variants for these names. The Working Group arrived at a set of final recommendations, and its consensus recommendations were approved unanimously by the GNSO Council on 27 September 2018. On 27 January 2019, the Board adopted the final recommendations and directed ICANN org to implement the recommendations.

The issue of protection for IGO and a few specific RCRC acronyms remains unresolved. The ICANN Board continues to discuss the 2013 PDP recommendations and GAC advice.

Learn more about the implementation effort here; see the latest update of current IRT work in the GNSO Policy Briefing here.

Status:

Web Presence:

- Wiki
- Email Archive – Original PDP WG
- Email Archive – Reconvened WG

Responsible Staff Members:

- Berry Cobb
- Mary Wong

Working Group Members & Leadership and GNSO Liaison

- See wiki membership page

For the latest information and status on this project:

- See project list

The IGO letter to the Board:

Submitted on: 13 December 2011

- Letter
- The IGO Common Position Paper

The ICANN Board's letter to the GNSO and GAC on the IGO issue:

Submitted on: 11 March 2012

- Letter

The GNSO Council response to the Board's letter on the IGO issue:

Submitted on: 26 March 2012

- Letter

GNSO Resolution on the Creation of an Issue Report:

Adopted on: 12 April 2012

Summary: The GNSO Council requests an issue report to precede the possibility of a PDP that covers the following issues: …..… [see link for details]

- Resolutions

Preliminary Issue Report:

Submitted on: 04 June 2012

- Report
- Public Comment

Final Issue Report:

Adopted on: 1 October 2012

- Report

GNSO Resolution on the Initiation of the PDP:

Adopted on: 17 October 2012

Summary: Resolved, the GNSO hereby initiates a PDP to evaluate (ii) whether there is a need for special protections at the top and second level in all gTLDs for the names of the following types of international organizations:

International Governmental Organizations (IGOs) and international non-governmental organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, and specifically including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), and (ii) if so, to develop policy recommendations for such protections. [see link for details].

- Resolution

Working Group Charter:

Adopted on: 15 November 2012

- Charter

Input from Supporting Organizations/Advisory Committees and GNSO Stakeholder Groups/Constituencies:

- Input Request and Responses Received

Working Group Initial Report:

Submitted on: 14 June 2013

- Initial Report
- Public Comment

Working Group Proposed Final Report:

Submitted on: 20 September 2013

- Report
- Public Comment

Working Group Final Report:

Submitted on: 10 November 2013

- IGO-INGO Final Report
  - Supplement A – Minority Positions
  - Supplement B – WG Consensus Call Tool
  - Supplement C – Public Comment Review Tool
  - Supplement D – Red Cross Red Crescent Societies Identifier List
- Translated Final Report
  - العربية
  - 简体中文
  - Español
  - Français
  - Русский

GNSO Adoption of the Final Report:

Adopted on: 20 November 2013

Summary: The GNSO Council adopts in full the following Consensus recommendations made by the Working Group (including the definitions of Scope 1 and Scope 2 identifiers for all the various types of organizations considered) and recommends their adoption by the ICANN Board: ……. [see link for details]

- Resolution

Public Comment Prior to ICANN Board Consideration:

Submitted on: 27 November 2013

- Public Comment

Notification by the ICANN Board to the GAC to Request Input on Whether Policy Recommendations Raise Public Policy Issues:

Submitted on: 11 December 2013

- ICANN Board Letter to the GAC

GNSO Council Report to ICANN Board (Consent Agenda):

Submitted on: 23 January 2014

- Report

Board Paper:

Submitted on: 7 February 2014

- Board Paper

ICANN Board Consideration of IGO-INGO Protections Resolution:

Adopted on: 07 February 2014

Summary: Resolved (2014.02.07.06), the Board directs the ICANN Board New gTLD Program Committee to: (1) consider the policy recommendations from the GNSO as it continues to actively develop an approach to respond to the GAC advice on protections for IGOs; and (2) develop a comprehensive proposal to address the GAC advice and the GNSO policy recommendations for consideration by the Board at a subsequent meeting.… [see link for details]

- Resolution

ICANN Board Resolution of IGO-INGO Identifier Protections:

Adopted on: 30 April 2014

Resolved (2014.04.30.03), the Board hereby adopts the GNSO Council's unanimous recommendations on the Protection of IGO-INGO Identifiers in All gTLDs set forth in Annex A [PDF, 74 KB] attached hereto (which includes the GNSO recommendations that are not inconsistent with the GAC's advice).

Resolved (2014.04.30.04), the Board requests additional time to consider …..… [see resolution link for details]

- Resolution
- Annex A
- Annex B

Notice of Policy Actions and Implementation Direction:

Adopted on: 30 April 2014

- Notice of Policy Actions and Implementation Direction

Process for Amending Policy Recommendations:

- NGPC letter to GNSO Council (16 June 2014)
- Staff Briefing Note on Process for Amending GNSO Policy Recommendations (9 July 2014)
- Cover Letter to Position Paper: ICRC-IFRC Protection of Red Cross/Red Crescent Designations in the Domain Name System
- Position Paper: ICRC-IFRC Protection of Red Cross/Red Crescent Designations in the Domain Name System
- Briefing Paper: Reconciling GAC Advice & GNSO policy recommendations concerning protections for certain Red Cross names and acronyms at the second level in the domain name system
- Briefing Paper: Reconciling GAC public policy advice & GNSO policy recommendations concerning protections for International Governmental Organization acronyms at the second level in the domain name system

Reconvened Working Group Initial Report:

Submitted on: 21 June 2018

- Initial Report on the Protections for Certain Red Cross Names in all gTLDs – Policy Amendment Process
- Draft – Finite list of certain Red Cross Names
- Public Comment
- Public Comment Review Tool

Reconvened Working Group Final Report:

Submitted on: 6 August 2018

- Final Report
- Finite list of certain Red Cross names

Implementation Details:

- Protection of IGO and INGO Identifiers in All gTLDs Policy

Additional Information:

http://gnso.icann.org/en/group-activities/red-cross-ioc.htm

Ex. RLA-1

RESPONDENT'S EXHIBIT

21 Cal.4th 249, 980 P.2d 940, 87 Cal.Rptr.2d 237, 99 Cal. Daily Op. Serv. 6358, 1999 Daily Journal D.A.R. 8073
Supreme Court of California

GERTRUDE M. LAMDEN,
Plaintiff and Appellant,
v.
LA JOLLA SHORES CLUBDOMINIUM HOMEOWNERS ASSOCIATION,
Defendant and Respondent.

No. S070296.
Aug. 9, 1999.

SUMMARY

The board of directors of a condominium community association elected to spot-treat termite infestation rather than to fumigate. The owner of a condominium unit brought an action for an injunction and declaratory relief, alleging that the she had suffered diminution in the value of her unit as the result of the association's decision. The trial court found for the association, applying a deferential business judgment test. (Superior Court of San Diego County, No. 677082, Mack P. Lovett, Judge. *) The Court of Appeal, Fourth Dist., Div. One, No. D025485, reversed. It held that the trial court should have analyzed the association's actions under an objective standard of reasonableness test, and that had it done so, an outcome more favorable to the homeowner would have resulted.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the business judgment rule did not directly apply to this case, but that the trial court correctly deferred to the board's decision. The court further held that a court should defer to a community association board's authority and presumed expertise, regardless of the association's corporate status, when a duly constituted board, upon reasonable investigation, in good faith, and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants, and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas. (Opinion by Werdegar, J., expressing the unanimous view of the court.) ***250**

* Retired Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d, 1e, 1f)
Condominiums and Cooperative Apartments § 2--Condominiums--Associations--Treatment of Termite Infestation-- Owner's Legal Challenge--Judicial Standard of Review.
In an action for an injunction and declaratory relief brought by a condominium owner against the condominium community association, alleging that the association's election of spot treatment rather than fumigation to remedy termite infestation diminished the value of her unit, the trial court did not err in deferring

to the decisions of the association's board of directors. Although the business judgment rule, on which the court relied, did not directly apply, a court should defer to a community association board's authority and presumed expertise, regardless of the association's corporate status, when a duly constituted board, upon reasonable investigation, in good faith, and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants, and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas. Judicial deference is appropriate, since owners and directors of common interest developments are more competent than the courts to make the detailed and peculiar economic decisions necessary to maintain their developments.

[See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 322, 328. See also 7 Miller & Starr, Cal. Real Estate (2d ed. 1990) §§ 20:11, 20:12.]

(2a, 2b)
Corporations § 39--Directors, Officers, and Agents--Liability-- Business Judgment Rule.
The common law business judgment rule has two components, one that immunizes corporate directors from personal liability if they act in accordance with its requirements, and another that insulates from court intervention those management decisions that are made by directors in good faith in what they believe is the organization's best interest. A hallmark of the business judgment rule is that, when the rule's requirements are met, a court will not substitute its judgment for that of the corporation's board of directors. The business judgment rule has been justified primarily on two grounds. First, directors should be given wide latitude in their handling of corporate affairs because the hindsight of the judicial process is an imperfect device for evaluating business decisions. Second, the rule ***251** recognizes that shareholders to a very real degree voluntarily undertake the risk of bad business judgment; investors need not buy stock, for investment markets offer an array of opportunities less vulnerable to mistakes in judgment by corporate officers.

(3a, 3b)
Condominiums and Cooperative Apartments § 2--Condominiums-- Associations--Standard of Care--Residents' Safety in Common Areas.
A community association may be held to a landlord's standard of care as to residents' safety in the common areas. The association is, for all practical purposes, the development project's landlord. Traditional tort principles impose on landlords, no less than on homeowner associations that function as landlords in maintaining the common areas of large condominium complexes, a duty to exercise due care for the residents' safety in those areas under their control. This general duty includes the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures.

(4)
Condominiums and Cooperative Apartments § 2--Condominiums-- Associations--Enforcement of Use Restrictions.

An equitable servitude will be enforced unless it violates public policy, it bears no rational relationship to the protection, preservation, operation, or purpose of the affected land, or it otherwise imposes burdens on the affected land that are so disproportionate to the restriction's beneficial effects that the restriction should not be enforced. A common interest development's recorded use restrictions are enforceable equitable servitudes, unless unreasonable (Civ. Code, § 1354, subd. (a)). Hence, those restrictions should be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit. When an association determines that a unit owner has violated a use restriction, the association must do so in good faith, not in an arbitrary or capricious manner, and its enforcement procedures must be fair and applied uniformly. Generally, courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common interest development, are consistent with the development's governing documents, and comply with public policy.

(5)
Condominiums and Cooperative Apartments § 2--Condominiums--Legal Action by Homeowner--Enforcement of Use Restrictions. Under well-accepted principles of condominium law, a homeowner can sue the association for damages and an injunction to compel ***252** the association to enforce the provisions of the governing declaration of restrictions. The homeowner can also sue directly to enforce the declaration.

COUNSEL
Robert H. Lynn for Plaintiff and Appellant.
Mayfield & Associates and Gayle J. Mayfield for Common Interest Consumer Project as Amicus Curiae on behalf of Plaintiff and Appellant.
Robie & Matthai, James R. Robie, Kyle Kveton, Pamela E. Dunn, Claudia M. Sokol and Daniel J. Koes for Defendant and Respondent.
Weintraub Genshlea & Sproul, Curtis C. Sproul; Farmer, Weber & Case, John T. Farmer, Kimberly F. Rich; Even, Crandall, Wade, Lowe & Gates, Edwin B. Brown; Peters & Freedman, Simon J. Freedman and James R. McCormick, Jr., as Amici Curiae on behalf of Defendant and Respondent.
Hazel & Thomas, Michael A. Banzhaf, Robert M. Diamond and Michael S. Dingman for Community Associations Institute as Amicus Curiae on behalf of Defendant and Respondent.
Early, Maslach, Price & Baukol and Priscilla F. Slocum for Truck Insurance Exchange as Amicus Curiae on behalf of Defendant and Respondent.
Martin, Wilson & MacDowell, Scott A. Martin, John R. MacDowell and Steven S. Wang for Desert Falls Homeowners Association and Upland Hills Country Club Condominium Association as Amici Curiae on behalf of Defendant and Respondent.
June Babiracki Barlow and Neil D. Kalin for California Association of Realtors as Amicus Curiae on behalf of Defendant and Respondent.

WERDEGAR, J.

A building in a condominium development suffered from termite infestation. The board

of directors of the development's community association [1] decided to treat the infestation locally ("spot-treat"), rather than fumigate. Alleging the board's decision diminished the value of ***253** her unit, the owner of a condominium in the development sued the community association. In adjudicating her claims, under what standard should a court evaluate the board's decision?

As will appear, we conclude as follows: Where a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise. Thus, we adopt today for California courts a rule of judicial deference to community association board decisionmaking that applies, regardless of an association's corporate status, when owners in common interest developments seek to litigate ordinary maintenance decisions entrusted to the discretion of their associations' boards of directors. (Cf. *Levandusky v. One Fifth Ave. Apt. Corp.* (1990) 75 N.Y.2d 530, 537-538 [554 N.Y.S.2d 807, 811, 557 N.E.2d 1317, 1321] [analogizing a similarly deferential rule to the common law "business judgment rule"].)

Accordingly, we reverse the judgment of the Court of Appeal.

Background

Plaintiff Gertrude M. Lamden owns a condominium unit in one of three buildings comprising the La Jolla Shores Clubdominium condominium development (Development). [2] Over some years, the board of governors (Board) of defendant La Jolla Shores Clubdominium Homeowners Association (Association), an unincorporated community association, elected to spot treat (secondary treatment), rather than fumigate (primary treatment), for termites the building in which Lamden's unit is located (Building Three).

2 The Development was built, and its governing declaration of restrictions recorded, in 1971. In 1973 Lamden and her husband bought unit 375, one of 42 units in the complex's largest building. Until 1977 the Lamdens used their unit only as a rental. From 1977 until 1988 they lived in the unit; since 1988 the unit has again been used only as a rental.

In the late 1980's, attempting to remedy water intrusion and mildew damage, the Association hired a contractor to renovate exterior siding on all three buildings in the Development. The contractor replaced the siding on ***254** the southern exposure of Building Three and removed damaged drywall and framing. Where the contractor encountered termites, a termite extermination company provided spot treatment and replaced damaged material.

Lamden remodeled the interior of her condominium in 1990. At that time, the Association's manager arranged for a termite extermination company to spot-treat areas where Lamden had encountered termites.

The following year, both Lamden and the Association obtained termite inspection reports recommending fumigation, but the Association's Board decided against that approach. As the Court of Appeal explained, the Board based its decision not to fumigate on concerns about the cost of fumigation, logistical problems with temporarily relocating residents, concern that fumigation residue could affect residents' health and safety, awareness that upcoming walkway renovations would include replacement of damaged areas, pet moving expenses, anticipated breakage by the termite company, lost rental income and the likelihood that termite infestation would recur even if primary treatment were utilized. The Board decided to continue to rely on secondary treatment until a more widespread problem was demonstrated.

In 1991 and 1992, the Association engaged a company to repair water intrusion damage to four units in Building Three. The company removed siding in the balcony area, repaired and waterproofed the decks, and repaired joints between the decks and the walls of the units. The siding of the unit below Lamden's and one of its walls were repaired. Where termite infestation or damage became apparent during this project, spot treatment was applied and damaged material removed.

In 1993 and 1994, the Association commissioned major renovation of the Development's walkway system, the underpinnings of which had suffered water and termite damage. The $1.6 million walkway project was monitored by a structural engineer and an on-site architect.

In 1994, Lamden brought this action for damages, an injunction and declaratory relief. She purported to state numerous causes of action based on the Association's refusal to fumigate for termites, naming as defendants certain individual members of the Board as well as the Association. Her amended complaint included claims sounding in breach of contract (viz., the governing declaration of restrictions [Declaration]), breach of fiduciary duty and negligence. She alleged that the Association, in opting for secondary over primary treatment, had breached ***255** Civil Code section 1364, subdivision (b)(1) [3] and the Declaration [4] in failing adequately to repair, replace and maintain the common areas of the Development.

3 As discussed more fully *post*, "In a community apartment project, condominium project, or stock cooperative ... unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms." (Civ. Code, § 1364, subd. (b)(1).)

4 The Declaration, which contained the Development's governing covenants, conditions, and restrictions (CC&R's), stated that the Association was to provide for the management, maintenance, repair and preservation of the complex's common areas for the enhancement of the value of the project

and each unit and for the benefit of the owners.

Lamden further alleged that, as a proximate result of the Association's breaching its responsibilities, she had suffered diminution in the value of her condominium unit, repair expenses, and fees and costs in connection with this litigation. She also alleged that the Association's continued breach had caused and would continue to cause her irreparable harm by damaging the structural integrity and soundness of her unit, and that she has no adequate remedy at law. At trial, Lamden waived any damages claims and dismissed with prejudice the individual defendants. Presently, she seeks only an injunction and declaratory relief.

After both sides had presented evidence and argument, the trial court rendered findings related to the termite infestation affecting plaintiff's condominium unit, its causes, and the remedial steps taken by the Association. The trial court found there was "no question from all the evidence that Mrs. Lamden's unit ... has had a serious problem with termites." In fact, the trial court found, "The evidence ... was overwhelming that termites had been a problem over the past several years." The court concluded, however, that while "there may be active infestation" that would require "steps [to be] taken within the future years," there was no evidence that the condominium units were in imminent structural danger or "that these units are about to fall or something is about to happen."

The trial court also found that, "starting in the late '80's," the Association had arranged for "some work" addressing the termite problem to be done. Remedial and investigative work ordered by the Association included, according to the trial court, removal of siding to reveal the extent of damage, a "big project ... in the early '90's," and an architect's report on building design factors. According to the court, the Board "did at one point seriously consider" primary treatment; "they got a bid for this fumigation, and there was discussion." The court found that the Board also considered possible problems entailed by fumigation, including relocation costs, lost rent, concerns about pets and plants, human health issues and eventual termite reinfestation. ***256**

As to the causes of the Development's termite infestation, the trial court concluded that "the key problem came about from you might say a poor design" and resulting "water intrusion." In short, the trial court stated, "the real culprit is not so much the Board, but it's the poor design and the water damage that is conducive to bringing the termites in."

As to the Association's actions, the trial court stated, "the Board did take appropriate action." The court noted the Board "did come up with a plan," viz., to engage a pest control service to "come out and [spot] treat [termite infestation] when it was found." The trial judge opined he might, "from a personal relations standpoint," have acted sooner or differently under the circumstances than did the Association, but nevertheless concluded "the Board did have a rational basis for their decision to reject fumigation, and do ... what they did." Ultimately, the court gave judgment for the Association, applying what it called a "business judgment test." Lamden appealed.

Citing *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490 [229 Cal.Rptr. 456, 723 P.2d 573, 59 A.L.R.4th 447] (*Frances T.*), the Court of Appeal agreed with Lamden that the trial court had applied the wrong standard of care in assessing the Association's actions. In the Court of Appeal's view, relevant statutes, the governing Declaration and principles of common law imposed on the Association an objective duty of reasonable care in repairing and maintaining the Development's common areas near Lamden's unit as occasioned by the presence of termites. The court also concluded that, had the trial court analyzed the Association's actions under an objective standard of reasonableness, an outcome more favorable to Lamden likely would have resulted. Accordingly, the Court of Appeal reversed the judgment of the trial court.

We granted the Association's petition for review.

Discussion

"In a community apartment project, condominium project, or stock cooperative ... unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms." (Civ. Code, § 1364, subd. (b)(1).) The Declaration in this case charges the Association with "management, maintenance and preservation" of the Development's common areas. Further, the Declaration confers upon the Board power and authority to maintain and repair the common areas. Finally, the Declaration provides that "limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of value of the Project and all Condominiums and (ii) the benefit of all Owners." ***257**

(1a) In light of the foregoing, the parties agree the Association is responsible for the repair and maintenance of the Development's common areas occasioned by the presence of termites. They differ only as to the standard against which the Association's performance in discharging this obligation properly should be assessed: a deferential "business judgment" standard or a more intrusive one of "objective reasonableness."

The Association would have us decide this case through application of "the business judgment rule." As we have observed, that rule of judicial deference to corporate decisionmaking "exists in one form or another in every American jurisdiction." (*Frances T.*, *supra*, 42 Cal.3d at p. 507, fn. 14.)

(2a) "The common law business judgment rule has two components—one which immunizes [corporate] directors from personal liability if they act in accordance with its requirements, and another which insulates from court intervention those management decisions which are made by directors in good faith in what the directors believe is the organization's best interest." (*Lee v. Interinsurance Exchange* (1996) 50 Cal.App.4th 694, 714 [57 Cal.Rptr.2d 798], citing 2 Marsh & Finkle, Marsh's Cal. Corporation Law (3d ed., 1996 supp.) § 11.3, pp. 796-797.) A hallmark of the business judgment rule is that, when the rule's requirements are met, a court will not substitute its judgment for that of the corporation's board

of directors. (See generally, *Katz v. Chevron Corp.* (1994) 22 Cal.App.4th 1352, 1366 [27 Cal.Rptr.2d 681].) As discussed more fully below, in California the component of the common law rule relating to directors' personal liability is defined by statute. (See Corp. Code, §§ 309 [profit corporations], 7231 [nonprofit corporations].)

(1b) According to the Association, uniformly applying a business judgment standard in judicial review of community association board decisions would promote certainty, stability and predictability in common interest development governance. Plaintiff, on the other hand, contends general application of a business judgment standard to board decisions would undermine individual owners' ability, under Civil Code section 1354, to enforce, as equitable servitudes, the CC&R's in a common interest development's declaration.[5] Stressing residents' interest in a stable and predictable living environment, as embodied in a given development's particular CC&R's, ***258** plaintiff encourages us to impose on community associations an objective standard of reasonableness in carrying out their duties under governing CC&R's or public policy.

5 Civil Code section 1354, subdivision (a) provides: "The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both."

For at least two reasons, what we previously have identified as the "business judgment rule" (see *Frances T., supra*, 42 Cal.3d at p. 507 [discussing Corporations Code section 7231] and fn. 14 [general discussion of common law rule]; *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594 [83 Cal.Rptr. 418, 463 P.2d 770] [reference to common law rule]) does not directly apply to this case. First, the statutory protections for individual directors (Corp. Code, §§ 309, subd. (c), 7231, subd. (c)) do not apply, as no individual directors are defendants here.

Corporations Code sections 309 and 7231 (section 7231) are found in the General Corporation Law (Corp. Code, § 100 et seq.) and the Nonprofit Corporation Law (*id.*, § 5000 et seq.), respectively; the latter incorporates the standard of care defined in the former (*Frances T., supra*, 42 Cal.3d at p. 506, fn. 13, citing legis. committee com., Deering's Ann. Corp. Code (1979 ed.) foll. § 7231, p. 205; 1B Ballantine & Sterling, Cal. Corporation Laws (4th ed. 1984) § 406.01, p. 19-192). Section 7231 provides, in relevant part: "A director shall perform the duties of a director ... in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." (§ 7231, subd. (a); cf. Corp. Code, § 309, subd. (a).) "A person who performs the duties of a director in accordance with [the stated standards] shall have no liability based upon any alleged failure to discharge the person's

obligations as a director ....” (§ 7231, subd. (c); cf. Corp. Code, § 309, subd. (c).)

Thus, by its terms, section 7231 protects only “[a] person who performs the duties of a director” (§ 7231, subd. (c), italics added); it contains no reference to the component of the common law business judgment rule that somewhat insulates ordinary corporate business decisions, per se, from judicial review. (See generally, *Lee v. Interinsurance Exchange*, *supra*, 50 Cal.App.4th at p. 714, citing 2 Marsh & Finkle, Marsh's Cal. Corporation Law, *supra*, § 11.3, pp. 796-797.) Moreover, plaintiff here is seeking only injunctive and declaratory relief, and it is not clear that such a prayer implicates section 7231. The statute speaks only of protection against “liability based upon any alleged failure to discharge the person's obligations ....” (§ 7231, subd. (c), italics added.)

As no compelling reason for departing therefrom appears, we must construe section 7231 in accordance with its plain language. (*Rossi v. Brown* ***259** (1995) 9 Cal.4th 688, 694 [38 Cal.Rptr.2d 363, 889 P.2d 557]; *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823 P.2d 1216]; *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 [268 Cal.Rptr. 753, 789 P.2d 934].) It follows that section 7231 cannot govern for present purposes.

Second, neither the California statute nor the common law business judgment rule, strictly speaking, protects noncorporate entities, and the defendant in this case, the Association, is not incorporated. [6]

6 The parties do not dispute that the component of the common law business judgment rule calling for deference to corporate decisions survives the Legislature's codification, in section 7231, of the component shielding individual directors from liability. (See also *Lee v. Interinsurance Exchange*, *supra*, 50 Cal.App.4th at p. 714; see generally, *California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297 [65 Cal.Rptr.2d 872, 940 P.2d 323] [unless expressly provided, statutes should not be interpreted to alter the common law]; *Rojo v. Kliger* (1990) 52 Cal.3d 65, 80 [276 Cal.Rptr. 130, 801 P.2d 373] [“statutes do not supplant the common law unless it appears that the Legislature intended to cover the entire subject”].)

(2b) Traditionally, our courts have applied the common law “business judgment rule” to shield from scrutiny qualifying decisions made by a corporation's board of directors. (See, e.g., *Marsili v. Pacific Gas & Elec. Co.* (1975) 51 Cal.App.3d 313, 324 [124 Cal.Rptr. 313, 79 A.L.R.3d 477]; *Fairchild v. Bank of America* (1961) 192 Cal.App.2d 252, 256-257 [13 Cal.Rptr. 491]; *Findley v. Garrett* (1952) 109 Cal.App.2d 166, 174-175 [240 P.2d 421]; *Duffey v. Superior Court* (1992) 3 Cal.App.4th 425, 429 [4 Cal.Rptr.2d 334] [rule applied to decision by board of incorporated community association]; *Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858, 865 [137 Cal.Rptr. 528] [same].) The policies underlying judicial creation of the common law rule derive from the realities of business in the corporate context. As we previously have observed:

"The business judgment rule has been justified primarily on two grounds. First, that directors should be given wide latitude in their handling of corporate affairs because the hindsight of the judicial process is an imperfect device for evaluating business decisions. Second, '[t]he rule recognizes that shareholders to a very real degree voluntarily undertake the risk of bad business judgment; investors need not buy stock, for investment markets offer an array of opportunities less vulnerable to mistakes in judgment by corporate officers.' " (*Frances T.*, *supra*, 42 Cal.3d at p. 507, fn. 14, quoting 18B Am.Jur.2d (1985) Corporations, § 1704, pp. 556-557; see also *Findley v. Garrett*, *supra*, 109 Cal.App.2d at p. 174.)

(1c) California's statutory business judgment rule contains no express language extending its protection to noncorporate entities or actors. ***260** Section 7231, as noted, is part of our Corporations Code and, by its terms, protects only "director[s]." In the Corporations Code, except where otherwise expressly provided, "directors" means "natural persons" designated, elected or appointed "to act as members of the governing body of the corporation." (Corp. Code, § 5047.)

Despite this absence of textual support, the Association invites us for policy reasons to construe section 7231 as applying both to incorporated and unincorporated community associations. (See generally, Civ. Code, § 1363, subd. (a) [providing that a common interest development "shall be managed by an association which may be incorporated or unincorporated"]; *id.*, subd. (c) ["Unless the governing documents provide otherwise," the association, whether incorporated or unincorporated, "may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code."]; *Oil Workers Intl. Union v. Superior Court* (1951) 103 Cal.App.2d 512, 571 [230 P.2d 71], quoting *Otto v. Tailors' P. & B. Union* (1888) 75 Cal. 308, 313 [17 P. 217] [observing that when courts take jurisdiction over unincorporated associations for the purpose of protecting members' property rights, they " 'will follow and enforce, so far as applicable, the rules applying to incorporated bodies of the same character' "]; *White v. Cox* (1971) 17 Cal.App.3d 824, 828 [95 Cal.Rptr. 259, 45 A.L.R.3d 1161] [noting "unincorporated associations are now entitled to general recognition as separate legal entities"].) Since other aspects of this case—apart from the Association's corporate status—render section 7231 inapplicable, anything we might say on the question of the statute's broader application would, however, be dictum. Accordingly, we decline the Association's invitation to address the issue.

For the foregoing reasons, the "business judgment rule" of deference to corporate decisionmaking, at least as we previously have understood it, has no direct application to the instant controversy. The precise question presented, then, is whether we should in this case adopt for California courts a rule—analogous perhaps to the business judgment rule—of judicial deference to community association board decisionmaking that would apply, regardless of an association's corporate status, when owners in common interest developments seek to litigate ordinary maintenance decisions entrusted to the

discretion of their associations' boards of directors. (Cf. *Levandusky v. One Fifth Ave. Apt. Corp.*, *supra*, 75 N.Y.2d at p. 538 [554 N.Y.S.2d at p. 811] [referring "for the purpose of analogy only" to the business judgment rule in adopting a rule of deference].)

Our existing jurisprudence specifically addressing the governance of common interest developments is not voluminous. While we have not previously ***261** examined the question of what standard or test generally governs judicial review of decisions made by the board of directors of a community association, we have examined related questions.

Fifty years ago, in *Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442 [211 P.2d 302, 19 A.L.R.2d 1268], we held that the decision by the board of directors of a real estate development company to deny, under a restrictive covenant in a deed, the owner of a fractional part of a lot permission to build a dwelling thereon "must be a reasonable determination made in good faith." (*Id.* at p. 447, citing *Parsons v. Duryea* (1927) 261 Mass. 314, 316 [158 N.E. 761, 762]; *Jones v. Northwest Real Estate Co.* (1925) 149 Md. 271, 278 [131 A. 446, 449]; *Harmon v. Burow* (1919) 263 Pa. 188, 190 [106 A. 310, 311].) Sixteen years ago, we held that a condominium owners association is a "business establishment" within the meaning of the Unruh Civil Rights Act, section 51 of the Civil Code. (*O'Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, 796 [191 Cal.Rptr. 320, 662 P.2d 427]; but see *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1175 [278 Cal.Rptr. 614, 805 P.2d 873] [declining to extend *O'Connor*]; *Curran v. Mount Diablo Council of the Boy Scouts* (1998) 17 Cal.4th 670, 697 [72 Cal.Rptr.2d 410, 952 P.2d 218] [same].) And 10 years ago, in *Frances T.*, *supra*, 42 Cal.3d 490, we considered "whether a condominium owners association and the individual members of its board of directors may be held liable for injuries to a unit owner caused by third-party criminal conduct." (*Id.* at p. 495.)

(3a) In *Frances T.*, a condominium owner who resided in her unit brought an action against the community association, a nonprofit corporation, and the individual members of its board of directors after she was raped and robbed in her dwelling. She alleged negligence, breach of contract and breach of fiduciary duty, based on the association's failure to install sufficient exterior lighting and its requiring her to remove additional lighting that she had installed herself. The trial court sustained the defendants' general demurrers to all three causes of action. (*Frances T.*, *supra*, 42 Cal.3d at p. 495.) We reversed. A community association, we concluded, may be held to a landlord's standard of care as to residents' safety in the common areas (*id.* at pp. 499-500), and the plaintiff had alleged particularized facts stating a cause of action against both the association and the individual members of the board (*id.* at p. 498). The plaintiff failed, however, to state a cause of action for breach of contract, as neither the development's governing CC&R's nor the association's bylaws obligated the defendants to install additional lighting. The plaintiff failed likewise to state a cause of action for breach of fiduciary duties, as the defendants had fulfilled their duty to the plaintiff as a shareholder, and the plaintiff

had alleged no facts to show that ***262** the association's board members had a fiduciary duty to serve as the condominium project's landlord. (*Id.* at pp. 512-514.)

In discussing the scope of a condominium owners association's common law duty to a unit owner, we observed in *Frances T.* that "the Association is, for all practical purposes, the Project's 'landlord.' " (*Frances T., supra*, 42 Cal.3d at p. 499, fn. omitted.) And, we noted, "traditional tort principles impose on landlords, no less than on homeowner associations that function as a landlord in maintaining the common areas of a large condominium complex, a duty to exercise due care for the residents' safety in those areas under their control." (*Ibid.*, citing *Kwaitkowski v. Superior Trading Co.* (1981) 123 Cal.App.3d 324, 328 [176 Cal.Rptr. 494]; *O'Hara v. Western Seven Trees Corp.* (1977) 75 Cal.App.3d 798, 802-803 [142 Cal.Rptr. 487]; *Kline v. 1500 Massachusetts Avenue Apartment Corp.* (1970) 439 F.2d 477, 480-481 [141 App.D.C. 370, 43 A.L.R.3d 311]; *Scott v. Watson* (1976) 278 Md. 160 [359 A.2d 548, 552].) We concluded that "under the circumstances of this case the Association should be held to the same standard of care as a landlord" (*Frances T., supra*, 42 Cal.3d at p. 499; see also *id.* at pp. 499-501, relying on *O'Connor v. Village Green Owners Assn., supra*, 33 Cal.3d at p. 796 ["association performs all the customary business functions which in the traditional landlord-tenant relationship rest on the landlord's shoulders"] and *White v. Cox, supra*, 17 Cal.App.3d at p. 830 [association, as management body over which individual owner has no effective control, may be sued for negligence in maintaining sprinkler].)

More recently, in *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 375 [33 Cal.Rptr.2d 63, 878 P.2d 1275] (*Nahrstedt*), we confronted the question, "When restrictions limiting the use of property within a common interest development satisfy the requirements of covenants running with the land or of equitable servitudes, what standard or test governs their enforceability?" [7]

7 Our opinion in *Nahrstedt* also contains extensive background discussion, which need not be reproduced here. *Nahrstedt*'s background materials discuss the origin and development of condominiums, cooperatives and planned unit developments as widely accepted forms of real property ownership (*Nahrstedt, supra*, 8 Cal.4th at pp. 370-375, citing numerous authorities); California's statutory scheme governing condominiums and other common interest developments (*id.* at pp. 377-379 [describing the Davis-Stirling Act]); and general property law principles respecting equitable servitudes and their enforcement (*Nahrstedt*, *supra*, at pp. 380-382).

(4) In *Nahrstedt*, an owner of a condominium unit who had three cats sued the community association, its officers and two of its employees for declaratory relief, seeking to prevent the defendants from enforcing against ***263** her a prohibition on keeping pets that was contained in the community association's recorded CC&R's. In resolving the dispute, we distilled from numerous authorities the

principle that "[a]n equitable servitude will be enforced unless it violates public policy; it bears no rational relationship to the protection, preservation, operation or purpose of the affected land; or it otherwise imposes burdens on the affected land that are so disproportionate to the restriction's beneficial effects that the restriction should not be enforced." (*Nahrstedt*, *supra*, 8 Cal.4th at p. 382.) Applying this principle, and noting that a common interest development's recorded use restrictions are "enforceable equitable servitudes, unless unreasonable" (Civ. Code, § 1354, subd. (a)), we held that "such restrictions should be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit" (*Nahrstedt*, *supra*, at p. 382). (See also *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 349 [47 Cal.Rptr.2d 898, 906 P.2d 1314] [previously recorded restriction on property use in common plan for ownership of subdivision property enforceable even if not cited in deed at time of sale].)

In deciding *Nahrstedt*, we noted that ownership of a unit in a common interest development ordinarily "entails mandatory membership in an owners association, which, through an elected board of directors, is empowered to enforce any use restrictions contained in the project's declaration or master deed and to enact new rules governing the use and occupancy of property within the project." (*Nahrstedt*, *supra*, 8 Cal.4th at p. 373, citing Cal. Condominium and Planned Development Practice (Cont.Ed.Bar 1984) § 1.7, p. 13; Note, *Community Association Use Restrictions: Applying the Business Judgment Doctrine* (1988) 64 Chi.-Kent L.Rev. 653; Natelson, Law of Property Owners Associations (1989) § 3.2.2, p. 71 et seq.) "Because of its considerable power in managing and regulating a common interest development," we observed, "the governing board of an owners association must guard against the potential for the abuse of that power." (*Nahrstedt*, *supra*, at pp. 373-374, fn. omitted.) We also noted that a community association's governing board's power to regulate "pertains to a 'wide spectrum of activities,' such as the volume of playing music, hours of social gatherings, use of patio furniture and barbecues, and rental of units." (*Id.* at p. 374, fn. 6.)

We declared in *Nahrstedt* that, "when an association determines that a unit owner has violated a use restriction, the association must do so in good faith, not in an arbitrary or capricious manner, and its enforcement procedures must be fair and applied uniformly." (*Nahrstedt*, *supra*, 8 Cal.4th at p. 383, ***264** citing *Ironwood Owners Assn. IX v. Solomon* (1986) 178 Cal.App.3d 766, 772 [224 Cal.Rptr. 18]; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 650 [191 Cal.Rptr. 209].) Nevertheless, we stated, "Generally, courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common interest development, are consistent with the development's governing documents, and comply with public policy." (*Nahrstedt*, *supra*, at p. 374, citing Natelson, *Consent, Coercion, and "Reasonableness" in Private Law: The Special Case of the Property Owners Association* (1990) 51 Ohio State L.J. 41, 43.)

The plaintiff in this case, like the plaintiff in *Nahrstedt*, owns a unit in a common interest development and disagrees with a particular aspect of the development's overall governance as it has impacted her. Whereas the restriction at issue in *Nahrstedt* (a ban on pets), however, was promulgated at the development's inception and enshrined in its founding CC&R's, the decision plaintiff challenges in this case (the choice of secondary over primary termite treatment) was promulgated by the Association's Board long after the Development's inception and after plaintiff had acquired her unit. Our holding in *Nahrstedt*, which established the standard for judicial review of recorded use restrictions that satisfy the requirements of covenants running with the land or equitable servitudes (see *Nahrstedt*, *supra*, 8 Cal.4th at p. 375), therefore, does not directly govern this case, which concerns the standard for judicial review of discretionary economic decisions made by the governing boards of community associations.

In *Nahrstedt*, moreover, some of our reasoning arguably suggested a distinction between originating CC&R's and subsequently promulgated use restrictions. Specifically, we reasoned in *Nahrstedt* that giving deference to a development's originating CC&R's "protects the general expectations of condominium owners 'that restrictions in place at the time they purchase their units will be enforceable.' " (*Nahrstedt*, *supra*, 8 Cal.4th at p. 377, quoting Note, *Judicial Review of Condominium Rulemaking* (1981) 94 Harv. L.Rev. 647, 653.) Thus, our conclusion that judicial review of a common interest development's founding CC&R's should proceed under a deferential standard was, as plaintiff points out, at least partly derived from our understanding (invoked there by way of contrast) that the factors justifying such deference will not necessarily be present when a court considers subsequent, unrecorded community association board decisions. (See *Nahrstedt*, *supra*, at pp. 376-377, discussing *Hidden Harbour Estates v. Basso* (Fla.Dist.Ct.App. 1981) 393 So.2d 637, 639-640.)

(1d) Nevertheless, having reviewed the record in this case, and in light of the foregoing authorities, we conclude that the Board's decision here to ***265** use secondary, rather than primary, treatment in addressing the Development's termite problem, a matter entrusted to its discretion under the Declaration and Civil Code section 1364, falls within *Nahrstedt*'s pronouncement that, "Generally, courts will uphold decisions made by the governing board of an owners association so long as they represent good faith efforts to further the purposes of the common interest development, are consistent with the development's governing documents, and comply with public policy." (*Nahrstedt*, *supra*, 8 Cal.4th at p. 374.) Moreover, our deferring to the Board's discretion in this matter, which, as previously noted, is broadly conferred in the Development's CC&R's, is consistent with *Nahrstedt*' s holding that CC&R's "should be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit." (*Id.* at p. 382.)

Here, the Board exercised discretion clearly within the scope of its authority under the Declaration and governing statutes to select

among means for discharging its obligation to maintain and repair the Development's common areas occasioned by the presence of wood-destroying pests or organisms. The trial court found that the Board acted upon reasonable investigation, in good faith, and in a manner the Board believed was in the best interests of the Association and its members. (See generally, *Nahrstedt*, *supra*, 8 Cal.4th at p. 374; *Frances T.*, *supra*, 42 Cal.3d at pp. 512-514 [association's refusal to install lighting breached no contractual or fiduciary duties]; *Hannula v. Hacienda Homes*, *supra*, 34 Cal.2d at p. 447 ["refusal to approve plans must be a reasonable determination made in good faith"].)

Contrary to the Court of Appeal, we conclude the trial court was correct to defer to the Board's decision. We hold that, where a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise.

The foregoing conclusion is consistent with our previous pronouncements, as reviewed above, and also with those of California courts, generally, respecting various aspects of association decisionmaking. (See *Pinsker v. Pacific Coast Society of Orthodontists* (1974) 12 Cal.3d 541, 550 [116 Cal.Rptr. 245, 526 P.2d 253] [holding "whenever a private association is legally required to refrain from arbitrary action, the association's action must be substantively rational and procedurally fair"]; *Ironwood Owners Assn. IX* ***266** v. *Solomon*, *supra*, 178 Cal.App.3d at p. 772 [holding homeowners association seeking to enforce CC&R's to compel act by member owner must "show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious"]; *Cohen v. Kite Hill Community Assn.*, *supra*, 142 Cal.App.3d at p. 650 [noting "a settled rule of law that homeowners associations must exercise their authority to approve or disapprove an individual homeowner's construction or improvement plans in conformity with the declaration of covenants and restrictions, and in good faith"]; *Laguna Royale Owners Assn. v. Darger* (1981) 119 Cal.App.3d 670, 683-684 [174 Cal.Rptr. 136] [in purporting to test "reasonableness" of owners association's refusal to permit transfer of interest, court considered "whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments" and "whether the power was exercised in a fair and nondiscriminatory manner"].) [8]

8 Courts in other jurisdictions have adopted similarly deferential rules. (See, e.g., *Levandusky v. One Fifth Ave. Apt. Corp.*, *supra*, 75 N.Y.2d at p. 538 [554 N.Y.S.2d at p. 812, 553 N.E.2d at pp. 1321-1322] [comparing benefits of a "reasonableness" standard with those of a "business judgment rule" and

holding that, when "the board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the board's"]; see also authorities cited there and *id*. at p. 545 [554 N.Y.S.2d at p. 816, 553 N.E.2d at p. 1326] (conc. opn. of Titone, J.) [standard analogous to business judgment rule is appropriate where "the challenged action was, in essence, a business judgment, i.e., a choice between competing and equally valid economic options" (italics omitted)].)

Our conclusion also accords with our recognition in *Frances T.* that the relationship between the individual owners and the managing association of a common interest development is complex. (*Frances T.*, *supra*, 42 Cal.3d at pp. 507-509; see also *Duffey v. Superior Court*, *supra*, 3 Cal.App.4th at pp. 428-429 [noting courts "analyze homeowner associations in different ways, depending on the function the association is fulfilling under the facts of each case" and citing examples]; *Laguna Publishing Co. v. Golden Rain Foundation* (1982) 131 Cal.App.3d 816, 844 [182 Cal.Rptr. 813]; *O'Connor v. Village Green Owners Assn.*, *supra*, 33 Cal.3d at p. 796; *Beehan v. Lido Isle Community Assn.*, *supra*, 70 Cal.App.3d at pp. 865-867.) On the one hand, each individual owner has an economic interest in the proper business management of the development as a whole for the sake of maximizing the value of his or her investment. In this aspect, the relationship between homeowner and association is somewhat analogous to that between shareholder and corporation. On the other hand, each individual owner, at least while residing in the development, has a personal, not strictly economic, ***267** interest in the appropriate management of the development for the sake of maintaining its security against criminal conduct and other foreseeable risks of physical injury. In this aspect, the relationship between owner and association is somewhat analogous to that between tenant and landlord. (See generally, *Frances T.*, *supra*, 42 Cal.3d at p. 507 [business judgment rule "applies to parties (particularly shareholders and creditors) to whom the directors owe a fiduciary obligation," but "does not abrogate the common law duty which every person owes to others—that is, a duty to refrain from conduct that imposes an unreasonable risk of injury on third parties"].)

Relying on *Frances T.*, the Court of Appeal held that a landlord-like common law duty required Association, in discharging its responsibility to maintain and repair the common areas occasioned by the presence of termites, to exercise reasonable care in order to protect plaintiff's unit from undue damage. (3b) As noted, "It is now well established that California law requires landowners to maintain land in their possession and control in a reasonably safe condition. [Citations.] In the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674 [25 Cal.Rptr.2d 137, 863 P.2d 207], citing, inter alia, *Frances T.*, *supra*, 42 Cal.3d at pp. 499-501.) (1e)

Contrary to the Court of Appeal, however, we do not believe this case implicates such duties. *Frances T.* involved a common interest development resident who suffered " 'physical injury, not pecuniary harm ....' " (*Frances T.*, *supra*, 42 Cal.3d at p. 505, quoting *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.*, *supra*, 1 Cal.3d at p. 595; see also *id.* at p. 507, fn. 14.) Plaintiff here, by contrast, has not resided in the Development since the time that significant termite infestation was discovered, and she alleges neither a failure by the Association to maintain the common areas in a reasonably safe condition, nor knowledge on the Board's part of any unreasonable risk of physical injury stemming from its failure to do so. Plaintiff alleges simply that the Association failed to effect necessary pest control and repairs, thereby causing her pecuniary damages, including diminution in the value of her unit. Accordingly, *Frances T.* is inapplicable.

Plaintiff warns that judicial deference to the Board's decision in this case would not be appropriate, lest every community association be free to do as little or as much as it pleases in satisfying its obligations to its members. We do not agree. Our respecting the Association's discretion, under this Declaration, to choose among modes of termite treatment does not foreclose the ***268** possibility that more restrictive provisions relating to the same or other topics might be "otherwise provided in the declaration[s]" (Civ. Code, § 1364, subd. (b)(1)) of other common interest developments. As discussed, we have before us today a declaration constituting a general scheme for maintenance, protection and enhancement of value of the Development, one that entrusts to the Association the management, maintenance and preservation of the Development's common areas and confers on the Board the power and authority to maintain and repair those areas.

Thus, the Association's obligation at issue in this case is broadly cast, plainly conferring on the Association the discretion to select, as it did, among available means for addressing the Development's termite infestation. Under the circumstances, our respecting that discretion obviously does not foreclose community association governance provisions that, within the bounds of the law, might more narrowly circumscribe association or board discretion.

Citing Restatement Third of Property, Servitudes, Tentative Draft No. 7,[9] plaintiff suggests that deference to community association discretion will undermine individual owners' previously discussed right, under Civil Code section 1354 and *Nahrstedt*, *supra*, 8 Cal.4th at page 382, to enforce recorded CC&R's as equitable servitudes, but we think not. (5) "Under well-accepted principles of condominium law, a homeowner can sue the association for damages and an injunction to compel the association to enforce the provisions of the declaration. [Citation.] More importantly here, the homeowner can sue directly to enforce the declaration." (*Posey v. Leavitt* (1991) 229 Cal.App.3d 1236, 1246-1247 [280 Cal.Rptr. 568], citing *Cohen* ***269** v. *Kite Hill Community Assn.*, *supra*, 142 Cal.App.3d 642.) Nothing we say here departs from those principles.

9 The Restatement tentative draft proposes that "In addition to duties

> imposed by statute and the governing documents, the association has the following duties to the members of the common interest community: [¶] (a) to use ordinary care and prudence in managing the property and financial affairs of the community that are subject to its control." (Rest.3d Property, Servitudes (Tent. Draft No. 7, Apr. 15, 1998) ch. 6, § 6.13, p. 325.) "The business judgment rule is not adopted, because the fit between community associations and other types of corporations is not very close, and it provides too little protection against careless or risky management of community property and financial affairs." (*Id.*, com. b at p. 330.) It is not clear to what extent the Restatement tentative draft supports plaintiff's position. As the Association points out, a "member challenging an action of the association under this section has the burden of proving a breach of duty by the association" and, when the action is one within association discretion, "the additional burden of proving that the breach has caused, or threatens to cause, injury to the member individually or to the interests of the common interest community." (Rest.3d Property (Tent. Draft No. 7), *supra*, § 6.13, p. 325.) Depending upon how it is interpreted, such a standard might be inconsistent with the standard we announced in *Nahrstedt*, viz., that a use restriction is enforceable "*not* by reference to facts that are specific to the objecting homeowner, but by reference to the common interest development as a whole." (*Nahrstedt*, *supra*, 8 Cal.4th at p. 386, italics in original.)

(1f) Finally, plaintiff contends a rule of judicial deference will insulate community association boards' decisions from judicial review. We disagree. As illustrated by *Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 754-755 [79 Cal.Rptr.2d 248] (*Fountain Valley*), judicial oversight affords significant protection against overreaching by such boards.

In *Fountain Valley*, a homeowners association, threatening litigation against an elderly homeowner with Hodgkin's disease, gained access to the interior of his residence and demanded he remove a number of personal items, including books and papers not constituting "standard reading material," claiming the items posed a fire hazard. (*Fountain Valley*, *supra*, 67 Cal.App.4th at p. 748.) The homeowner settled the original complaint (*id.* at p. 746), but cross-complained for violation of privacy, trespass, negligence and breach of contract (*id.* at p. 748). The jury returned a verdict in his favor, finding specifically that the association had acted unreasonably. (*Id.* at p. 749.)

Putting aside the question whether the jury, rather than the court, should have determined the ultimate question of the reasonableness *vel non* of the association's actions, the Court of Appeal held that, in light of the operative facts found by the jury, it was "virtually impossible" to say the association had acted reasonably. (*Fountain Valley*, *supra*, 67 Cal.App.4th at p. 754.) The city fire department had found no

fire hazard, and the association "did not have a good faith, albeit mistaken, belief in that danger." (*Ibid.*) In the absence of such good faith belief, the court determined the jury's verdict must stand (*id.* at p. 756), thus impliedly finding no basis for judicial deference to the association's decision.

Plaintiff suggests that our previous pronouncements establish that when, as here, a community association is charged generally with maintaining the common areas, any member of the association may obtain judicial review of the reasonableness of its choice of means for doing so. To the contrary, in *Nahrstedt* we emphasized that "anyone who buys a unit in a common interest development with knowledge of its owners association's discretionary power accepts 'the risk that the power may be used in a way that benefits the commonality but harms the individual.' " (*Nahrstedt*, *supra*, 8 Cal.4th at p. 374, quoting Natelson, *Consent, Coercion, and "Reasonableness" in Private* ***270** *Law: The Special Case of the Property Owners Association*, *supra*, 51 Ohio State L.J. at p. 67.) [10]

10 In this connection we note that, insofar as the record discloses, plaintiff is the only condominium owner who has challenged the Association's decision not to fumigate her building. To permit one owner to impose her will on all others and in contravention of the governing board's good faith decision would turn the principle of benefit to " 'the commonality but harm[to] the individual' " (*Nahrstedt*, *supra*, 8 Cal.4th at p. 374) on its head.

Nor did we in *Nahrstedt* impose on community associations strict liability for the consequences of their ordinary discretionary economic decisions. As the Association points out, unlike the categorical ban on pets at issue in *Nahrstedt*—which arguably is either valid or not—the Declaration here, in assigning the Association a duty to maintain and repair the common areas, does not specify how the Association is to act, just that it should. Neither the Declaration nor Civil Code section 1364 reasonably can be construed to mandate any particular mode of termite treatment.

Still less do the governing provisions require that the Association render the Development constantly or absolutely termite-free. Plainly, we must reject any per se rule "requiring a condominium association and its individual members to indemnify any individual homeowner for any reduction in value to an individual unit caused by damage.... Under this theory the association and individual members would not only have the duty to repair as required by the CC&Rs, but the responsibility to reimburse an individual homeowner for the diminution in value of such unit regardless if the repairs had been made or the success of such repairs." (*Kaye v. Mount La Jolla Homeowners Assn.* (1988) 204 Cal.App.3d 1476, 1487 [252 Cal.Rptr. 67] [disapproving cause of action for lateral and subjacent support based on association's failure, despite efforts, to remedy subsidence problem].)

The formulation we have articulated affords homeowners, community associations, courts

and advocates a clear standard for judicial review of discretionary economic decisions by community association boards, mandating a degree of deference to the latter's business judgments sufficient to discourage meritless litigation, yet at the same time without either eviscerating the long-established duty to guard against unreasonable risks to residents' personal safety owed by associations that "function as a landlord in maintaining the common areas" (*Frances T.*, *supra*, 42 Cal.3d at p. 499) or modifying the enforceability of a common interest development's CC&R's (Civ. Code, § 1354, subd. (a); *Nahrstedt*, *supra*, 8 Cal.4th at p. 374).

Common sense suggests that judicial deference in such cases as this is appropriate, in view of the relative competence, over that of courts, possessed by owners and directors of common interest developments to make ***271** the detailed and peculiar economic decisions necessary in the maintenance of those developments. A deferential standard will, by minimizing the likelihood of unproductive litigation over their governing associations' discretionary economic decisions, foster stability, certainty and predictability in the governance and management of common interest developments. Beneficial corollaries include enhancement of the incentives for essential voluntary owner participation in common interest development governance and conservation of scarce judicial resources.

Disposition

For the foregoing reasons, the judgment of the Court of Appeal is reversed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., Chin, J., and Brown, J., concurred. ***272**

Footnotes

FN1 In 1985, the Legislature enacted the Davis-Stirling Common Interest Development Act (Davis-Stirling Act) as division 2, part 4, title 6 of the Civil Code, "Common Interest Developments" (Civ. Code, §§ 1350-1376; Stats. 1985, ch. 874, § 14, pp. 2774-2787), which encompasses community apartment projects, condominium projects, planned developments and stock cooperatives (Civ. Code, § 1351, subd. (c)). "A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association." (Civ. Code, § 1363, subd. (a).)

Ex. RLA-2

RESPONDENT'S EXHIBIT

50 Cal.App.4th 694, 57 Cal.Rptr.2d 798, 96 Cal. Daily Op. Serv. 8021, 96 Daily Journal D.A.R. 13,278

WOO CHUL LEE et al., Plaintiffs and Appellants, v. INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA et al., Defendants and Respondents.

No. B089335. Court of Appeal, Second District, Division 3, California. Oct 31, 1996.

SUMMARY

Subscribers and former subscribers of an interinsurance exchange (a reciprocal insurer) brought an action against the exchange, its board of governors, the exchange's parent organization, and the exchange's corporate attorney-in-fact, to compel defendants to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts. The trial court entered a judgment of dismissal after sustaining defendants' demurrer to plaintiffs' third amended complaint without leave to amend. (Superior Court of Los Angeles County, No. BC062630, Barnet M. Cooperman, Judge.)

The Court of Appeal affirmed. The court held that the trial court properly sustained defendants' demurrer. Decisions for managing surplus funds of an insurer are exercises of business judgment, and courts are unqualified to second-guess determinations made by an insurer as to the amount of funds necessary to assure adequate funds to cover catastrophic losses, or as to the optimal form in which the funds should be held. The business judgment rule applies to reciprocal insurers, just as it applies to other business concerns. The court also held that Ins. Code, § 1282, did not preclude the exchange's board from the protection of the business judgment rule. The court further held that plaintiffs failed to allege facts that established an exception to the business judgment rule. More was needed than conclusory allegations of improper motives and conflict of interest. The court held that the trial court properly sustained defendants' demurrer, since plaintiffs, in executing the subscriber's agreement, contractually agreed to grant the exchange's board discretion concerning the maintenance and use of surplus funds. Although plaintiffs asserted that they were fraudulently induced to enter into the agreement, based on misrepresentations regarding subscribers' personal liability for the exchange's debts, there were no such misrepresentations, nor did the agreement conceal material facts. (Opinion by Croskey, Acting P. J., with Kitching and Aldrich, JJ., concurring.) ***695**

HEADNOTES

Classified to California Digest of Official Reports

(1)
Appellate Review § 128--Scope of Review--Function of Appellate Court-- Rulings on Demurrers.

In matters coming to the appellate court on a judgment of dismissal following the trial court's order sustaining a defendant's demurrer without leave to amend, the appellate court assumes the truth of all properly pleaded facts, but not contentions, deductions, or conclusions of fact or law. Assuming the truth of the plaintiff's factual allegations, the appellate court then independently determines whether the plaintiff has alleged cognizable claims.

(2a, 2b)
Insurance Companies § 12--Actions Against Interinsurance Exchange--Subscribers' Action to Compel Exchange to Deposit Surplus Funds Into Subscriber Savings Accounts--Business Judgment Rule.
The trial court properly sustained the demurrer of an interinsurance exchange (a reciprocal insurer) to an action by subscribers of the exchange that sought to compel it to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts. Decisions for managing surplus funds of an insurer are exercises of business judgment, and courts are unqualified to second-guess determinations made by an insurer as to the amount of funds necessary to assure adequate funds to cover catastrophic losses, or as to the optimal form in which the funds should be held. Assuring availability of funds to cover losses is a rational business purpose for an insurer. Moreover, the business judgment rule applies to reciprocal insurers, just as it applies to other business concerns; the relationship between the directors of a reciprocal insurer and its subscribers is identical in all significant ways to the relationship between the directors of any business organization and the organization's investors or other nonmanaging participants. Where the reason is the same, the rule should be the same (Civ. Code, § 3511). Moreover, management of the exchange's funds did not constitute an unlawful business practice (Bus. & Prof. Code, § 17200). Actions that are reasonable exercises of business judgment, that are not forbidden by law, and that fall within the discretion of the directors of a business under the business judgment rule cannot constitute unlawful business practices.

(3)
Corporations § 39--Officers and Agents--Liability--Business Judgment Rule:Words, Phrases, and Maxims--Business Judgment Rule.
The business judgment rule is a judicial policy of deference to the business judgment of corporate directors in the exercise of their broad discretion in making corporate decisions. The rule is based on the ***696** premise that those to whom the management of a business organization has been entrusted, and not the courts, are best able to judge whether a particular act or transaction is helpful to the conduct of the organization's affairs or expedient for the attainment of its purposes. The rule establishes a presumption that directors' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the directors in good faith and in the absence of a conflict of interest.

[See 9 **Witkin,** Summary of Cal. Law (9th ed. 1989) Corporations, § 110.]

(4)

Insurance Companies § 12--Actions Against Interinsurance Exchange-- Subscribers' Action to Compel Exchange to Deposit Surplus Funds Into Subscriber Savings Accounts--Business Judgment Rule--Applicability of Common Law Rule.

In an action by interinsurance exchange subscribers to compel the exchange (a reciprocal insurer) to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts, the trial court properly sustained defendants' demurrer. Ins. Code, § 1282, did not preclude the exchange's board from the protection of the business judgment rule. Although Ins. Code, § 1282, provides that certain provisions of the Insurance Code do not apply to reciprocal insurers, and while that section apparently precludes application of the statutory business judgment rule (Corp. Code, § 309) to reciprocal insurers, it does not preclude application of the common law business judgment rule. The common law business judgment rule has two components-one that immunizes directors from personal liability if they act in accordance with its requirements and another that insulates from court intervention those management decisions that are made by directors in good faith in what the directors believe is the organization's best interest. Only the first component is embodied in Corp. Code, § 309. Thus, even if Ins. Code, § 1282, makes Corp. Code, § 309, inapplicable to reciprocal insurers, the second component of the common law rule was unaffected, and it was the second component of the rule that applied to reciprocal insurers.

(5a, 5b)

Insurance Companies § 12--Actions Against Interinsurance Exchange--Subscribers' Action to Compel Exchange to Deposit Surplus Funds Into Subscriber Savings Accounts--Business Judgment Rule--Failure to Allege Exceptions to Rule.

In an action by interinsurance exchange subscribers to compel the exchange to deposit into subscriber savings accounts all surplus funds that exceeded legally ***697** required amounts, the trial court properly declined to interfere with the decisions of the exchange's board respecting management of surplus funds, where plaintiffs failed to allege facts that established an exception to the business judgment rule. More was needed to establish an exception to the business judgment rule than conclusory allegations of improper motives and conflict of interest. Nor was it sufficient to generally allege the failure to conduct an active investigation, in the absence of allegations of facts that reasonably called for such an investigation, or allegations of facts that would have been discovered by a reasonable investigation and would have been material to the questioned exercise of business judgment. While the interlocking boards of the exchange, its parent organization, and its attorney-in-fact may have created an opportunity for the parent organization to exercise undue influence over the exchange, that bare opportunity did not establish that fraud, bad faith, or gross overreaching had actually occurred. The parent organization's contingent future interest in the surplus remaining upon dissolution of the exchange was too remote and speculative to create a conflict of interest as to the disposition of present surplus in the absence of any showing or allegation the exchange was at all likely to be dissolved within the foreseeable future.

(6)
Corporations § 39--Officers and Agents--Liability--Business Judgment Rule--Presumption of Good Faith Decisions--Exceptions.
The business judgment rule sets up a presumption that directors' decisions are made in good faith and are based upon sound and informed business judgment. An exception to this presumption exists in circumstances that inherently raise an inference of conflict of interest. Such circumstances include those in which directors, particularly inside directors, take defensive action against a takeover by another entity, which may be advantageous to the corporation, but threatening to existing corporate officers. Similarly, a conflict of interest is inferable where the directors of a corporation that is being taken over approve generous termination agreements-"golden parachutes"-for existing inside directors. In situations of this kind, directors may reasonably be allocated the burden of showing good faith and reasonable investigation. But in most cases, the presumption created by the business judgment rule can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching, or an unreasonable failure to investigate material facts. Interference with the discretion of directors is not warranted in doubtful cases.

(7)
Insurance Companies § 12--Actions Against Interinsurance Exchange-- Subscribers' Challenge Concerning Entitlement to Surplus Funds Upon Dissolution of Exchange--Ripeness.
In an action ***698** by interinsurance exchange subscribers to compel the exchange to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts, the trial court properly found that the issue was not ripe for decision as to whether, upon dissolution of the exchange, the exchange's parent organization or the subscribers would be entitled to the exchange's assets. There had been no showing or any allegation of a likelihood that the exchange would be dissolved within the foreseeable future. Moreover, if the exchange was dissolved, the disposition of its assets would necessarily be overseen by the Commissioner of Insurance (Ins. Code, § 1070 et seq.), and persons claiming an interest in the assets would have the chance to challenge the parent organization's claims in the administrative proceedings.

(8)
Insurance Companies § 12--Actions Against Interinsurance Exchange-- Subscribers' Challenge Concerning Entitlement to Surplus Funds Upon Dissolution of Exchange--Subscribers' Agreement to Grant Exchange Discretion to Handle Surplus--Misrepresentations.
In an action by interinsurance exchange subscribers to compel the exchange to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts, the trial court properly sustained the exchange's demurrer, since the subscribers agreed in the subscriber's agreement to grant the exchange's board discretion concerning the maintenance and use of surplus. Although the subscribers asserted that they were fraudulently induced to enter into the agreement, based on misrepresentations regarding subscribers'

personal liability for the exchange's debts, there were no such misrepresentations. The agreement stated, "No present or future subscriber of the Exchange shall be liable in excess of the amount of his or her premium for any portion of the debts or liabilities of the Exchange." This statement was true since the Commissioner of Insurance had granted the exchange a certificate of perpetual nonassessability under Ins. Code, § 1401.5. A subscriber's liability to a judgment creditor is limited to "such proportion as his interest may appear" (Ins. Code, § 1450). This limitation means that a subscriber is liable for the amount for which each subscriber could be assessed by the exchange's attorney-in-fact or the Commissioner of Insurance. For subscribers of exchanges that are exempt from assessments under Ins. Code, § 1401 or 1401.5, there is no liability beyond the subscriber's paid premium for any debts of the exchange, including judgment debts.

(9a, 9b)
Insurance Companies § 12--Actions Against Interinsurance Exchange--Subscribers' Challenge Concerning Entitlement to Surplus Funds Upon Dissolution of Exchange--Subscribers' ***699** Agreement to Grant Exchange Discretion to Handle Surplus--Concealment of Material Facts.
In an action by interinsurance exchange subscribers to compel the exchange to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts, the trial court properly sustained the exchange's demurrer, since the subscribers agreed in the subscriber's agreement to grant the exchange's board discretion concerning the maintenance and use of surplus, and the agreement did not conceal material facts. Disbursements and withdrawal rights are entirely at the discretion of the insurers' directors (Ins. Code, § 1420). Thus, the subscribers could have no reasonable expectation of such rights, and there was no basis for claiming they were fraudulently induced to waive them. Nor could plaintiffs legitimately claim rights based upon the representative's manual of the parent organization; the manual was an internal document, was not intended to be communicated to potential subscribers, and made no promises to them. Plaintiffs failed to establish either that the agreement was fraudulent, or that the exchange's management of surplus was an unlawful business practice under Bus. & Prof. Code, § 17200.

(10)
Insurance Contracts and Coverage § 34--Avoidance of Policy-- Limitations Upon Enforcement.
There are two limitations upon the enforcement of insurance contracts, adhesion contracts generally, or provisions thereof. First, a contract or provision that does not fall within the reasonable expectations of the weaker or adhering party will not be enforced against him or her. Secondly, even if the contract or provision is consistent with the reasonable expectations of the parties, it will not be enforced if it is unduly oppressive or unconscionable.

(11)
Pleading § 67--Amendment--Sustaining Demurrer Without Leave to Amend-- Action Against Interinsurance Exchange--Subscribers'

Challenge Concerning Entitlement to Surplus Funds Upon Dissolution of Exchange.

In an action by interinsurance exchange subscribers to compel the exchange to deposit into subscriber savings accounts all surplus funds that exceeded legally required amounts, the trial court properly sustained the exchange's demurrer without leave to amend. An order sustaining a demurrer without leave to amend is unwarranted and constitutes an abuse of discretion if there is a reasonable possibility that the defect can be cured by amendment, but it is proper to sustain a demurrer without leave to amend if it is probable from the nature of the defects and previous unsuccessful attempts to plead that the plaintiff cannot state a cause of action. Plaintiffs had three opportunities to amend their complaint and were ***700** unable to successfully state a cause of action. Moreover, the defects in the complaints were not defects of form. Rather, the problem was that plaintiffs sought judicial intervention in management decisions as to the level and form of surplus funds of the exchange, even though such matters were within the discretion of the exchange's board and management, provided that those institutions acted in good faith. Since plaintiffs failed to allege facts that tended to establish an absence of good faith and reasonable inquiry, no cause of action existed by which the exchange's actions could be challenged.

COUNSEL

Keith E. Hall, Arter & Hadden, Edwin W. Duncan, Richard N. Ellner, Richard L. Fruin and William S. Davis for Plaintiffs and Appellants.

Morrison & Foerster, Seth M. Hufstedler and John Sobieski for Defendants and Respondents.

Greines, Martin, Stein & Richland, Robert A. Olson, Barry M. Wolf, Pillsbury, Madison & Sutro, Robert M. Westberg and Joseph A. Hearst as Amici Curiae on behalf of Defendants and Respondents.

CROSKEY, Acting P. J.

Three years ago, in *Barnes v. State Farm Mut. Auto. Ins. Co.* (1993) 16 Cal.App.4th 365 [20 Cal.Rptr.2d 87] (hereafter, *Barnes*), this court considered, among other issues, the question of whether a policyholder of a mutual insurance company can object to, or seek judicial assistance to control, the insurer's maintenance, management and disbursement of surplus funds. We answered that question in the negative. (*Id.* at pp. 378-380.)

The present action, brought by subscribers and former subscribers of the Interinsurance Exchange of the Automobile Club of Southern California (hereafter, the Exchange), raises essentially the same question.[1] However, unlike the defendant mutual insurer in *Barnes*, the Exchange is a reciprocal ***701** insurer, organized under chapter 3 (§ 1280 et seq., "Reciprocal Insurers,") of division 1, part 2 of the Insurance Code.[2]

1 Plaintiffs Woo Chul Lee and Rosemarie Flocken are current subscribers; plaintiff Jeung Sook Han, a subscriber for 10 years, withdrew in 1992. The lawsuit is designated in the complaint and in plaintiff-appellants' opening brief on appeal as a class action. However, it does not appear that a class has been certified.

2 All statutory references are to the Insurance Code unless otherwise indicated.

Reciprocal insurers, alternatively called interinsurance exchanges, differ from mutual insurers in some details of structure and legal status. However, as we shall explain, the differences between mutual and reciprocal insurers are not of a kind which justifies different rules respecting their insured's right to control business decisions of the insurer's governing board. We thus conclude that a reciprocal insurer, like a mutual insurer, is subject to the common law business judgment rule, which we relied upon in *Barnes*, and which protects the good faith business decisions of a business organization's directors, including decisions concerning the maintenance, management and disbursement of an insurer's surplus funds, from interference by the courts.

This action is against the Exchange; its board of governors and 11 of its members and former members (hereafter, collectively, the Board); the Automobile Club of Southern California (the Club); and ACSC Management Services, Inc. (ACSC). The plaintiffs appeal from a judgment of dismissal after the defendants' demurrer to the third amended complaint was sustained without leave to amend. We agree with the trial court's conclusion that plaintiffs failed to allege facts sufficient to constitute a cause of action against the defendants on any theory, because (1) the business judgment rule precludes judicial interference with the Board's good faith management of Exchange assets, (2) the plaintiffs have not alleged facts which establish a lack of good faith or a conflict of interest in the Board's management of Exchange assets, and (3) the plaintiffs, in executing subscriber's agreements with the Exchange, have contractually agreed to delegate control over Exchange assets to the Board, and such agreement is neither unconscionable nor unenforceable. We therefore affirm the judgment.

Factual and Procedural Background

1. *Introduction*

The Exchange is a reciprocal insurer, organized by the Club to provide insurance to Club members. The Club is a nonprofit corporation. In addition to the Exchange, the Club also organized, and is the parent organization of, ***702** codefendant ACSC. Section 1305 provides for a reciprocal insurer's insurance contracts to be executed by an attorney-in-fact, which may be a corporation. ACSC is the attorney-in-fact for the Exchange. [3]

3 Section 1305 provides that the contracts of insurance that are exchanged by subscribers of a reciprocal insurer "may be executed by an attorney-in-fact, agent or other representative duly authorized and acting for such subscribers under powers of attorney. Such authorized person is termed the attorney, and may be a corporation."

ACSC derives its management authority from powers of attorney which are included in the subscriber's agreements executed by subscribers when they purchase insurance from the Exchange. The subscriber's agreements also (1) delegate to the Board the subscribers' rights

of supervision over the attorney-in-fact; (2) provide that the subscriber agrees to be bound by the bylaws and rules and regulations adopted by the Board; (3) warrant that subscribers shall not be liable in excess of their premiums for any debts or liabilities of the Exchange; and (4) provide that dividends or credits may, by resolution of the Board, be returned to subscribers.

The plaintiffs' theories of recovery have shifted somewhat over the course of this litigation. However, the lawsuit's primary aim throughout the litigation has been to alter the Exchange's practice of maintaining large amounts of unallocated surplus. The plaintiffs claim, in effect, that it is inherent in the concept of interinsurance that subscribers have a greater ownership interest in the funds of an exchange and greater rights of control over the funds than are recognized by the operating rules and practices of the Exchange. They also claim it would be in the best interests of the Exchange and its subscribers if surplus funds were maintained, not as unallocated surplus, but in subscriber savings accounts, from which subscribers may withdraw their accumulated funds upon withdrawal from membership in the Exchange.

2. *The Historical and Current Nature of Reciprocal Insurance*

The first interinsurance exchanges were formed in the 1880's by groups of merchants and manufacturers. These exchanges were a form of organization by which individuals, partnerships or corporations, which were engaged in a similar line of business, undertook to indemnify each other against certain kinds of losses by means of a mutual exchange of insurance contracts, usually through the medium of a common attorney-in-fact, who was appointed for that purpose by each of the underwriters, or "subscribers." (Reinmuth, The Regulation Of Reciprocal Insurance Exchanges (1967) ch. I, The Development and Classification of Reciprocal Exchanges, pp. 1-2 (hereafter, Reinmuth); see also ***703** *Delos v. Farmers Insurance Group* (1979) 93 Cal.App.3d 642, 652 [155 Cal.Rptr. 843].) In the early 20th century, the concept of reciprocal insurance spread to consumer lines. The Exchange, organized by the Club in 1912, was the first reciprocal to offer automobile insurance. (Reinmuth, *supra*, ch. I, p. 3.)

Under the historical form of interinsurance contracts, each subscriber became both an insured and an insurer, and had several, not joint, liability on all obligations of the exchange. (*Delos v. Farmers Insurance Group, Inc.*, *supra*, 93 Cal.App.3d at p. 652; 2 Couch on Insurance 2d (rev. ed. 1984) § 18.11, p. 613) (hereafter, Couch); Reinmuth, *supra*, ch. II, The Legal Status Of Reciprocal Exchanges, pp. 10-20.) Accordingly, reciprocal insurers originally had no stock and no capital. The subscribers' contingent liability stood in place of capital stock. (*Mitchell v. Pacific Greyhound Lines* (1939) 33 Cal.App.2d 53, 59-60 [91 P.2d 176]; Couch, *supra*, § 18.11, pp. 614-615; Reinmuth, *supra*, ch. I, p. 2.) Originally, funds for the payment of losses and other debts were collected from subscribers as they occurred. However, this system resulted in frequent delays, hence subscribers later agreed to pay annual "premium deposits." (Reinmuth, *supra*, ch. I, p. 2.) These deposits remained to the credit of each subscriber in a separate account. (*Ibid.*; see also *Cal. State Auto. etc. Bureau v.*

Downey (1950) 96 Cal.App.2d 876, 879-880 [216 P.2d 882].) Subscribers' pro rata shares of losses and expenses, including a commission to the attorney-in-fact, were deducted as they occurred. Any balance remaining in a subscriber's account at the end of the year reverted to the subscriber as his or her "savings" or "surplus" and was distributed to the subscriber or was available to the subscriber upon withdrawal from the exchange. (Reinmuth, *supra*, ch. I, p. 2, ch. II, pp. 30-31.) On the other hand, if the subscriber's share of losses and expenses was greater than his deposit, the subscriber could be assessed for a specified maximum amount beyond the deposit. (Couch, *supra*, §§ 18:26-18:30, pp. 633-641; Reinmuth, *supra*, ch. I, p. 2.) By approximately the 1960's, this amount, in a number of states, came to be specified by statute and was commonly limited to an amount equal to one additional premium deposit. (Reinmuth, *supra*, ch. II, pp. 17-19; see, e.g., §§ 1397, 1398.)

The original concept of reciprocal insurance contemplated the allocation of all surplus to the individual subscribers. (Reinmuth, *supra*, ch. II, pp. 30-31.) Over time, however, it became customary for reciprocals to accumulate unallocated surplus, which was not subject to withdrawal by departing subscribers, but was held perpetually in anticipation of catastrophic losses. (Reinmuth, *supra*, ch. II, pp. 32-37; ch. X, Conclusions and Policy Alternatives, pp. 186-187.) By maintaining substantial surpluses of this kind, many reciprocals eventually obtained statutory rights to issue nonassessable policies, ***704** under which subscribers had no contingent liability for claims, expenses or losses of the exchange. The practice of issuing nonassessable policies is now common both in California and elsewhere. (Reinmuth, *supra*, ch. II, p. 18.) This, together with other lesser differences between today's reciprocals and those of the past, has led one commentator to conclude that the only remaining substantive difference between a reciprocal exchange and a mutual company is that some exchanges are managed by corporate proprietary attorneys-in-fact. (Reinmuth, *supra*, ch. II, p. 39.)

The reciprocal form of insurance organization as it now exists in California has been characterized by both parties to this action as difficult to define. However, the trial court gave an apt definition of this kind of enterprise: "This is what it is: it's an interinsurance exchange defined by the Insurance Code." As defined by the Code, a California reciprocal insurer retains little similarity to the reciprocals of the 19th century. The defining statutory characteristics of an interinsurance exchange which are relevant to the present controversy are as follows.

First, section 1303 now provides that reciprocals are no longer truly reciprocal enterprises, i.e., it is no longer true that each subscriber is both an insurer and an insured. Rather, section 1303 provides that a reciprocal insurance company, or interinsurance exchange, "shall be deemed the insurer while each subscriber shall be deemed an insured."

As in historical times, a present-day interinsurance exchange is managed by an attorney-in-fact, who is appointed pursuant to powers-of-attorney executed by the exchange's subscribers. (§ 1305.) The attorney-in-fact may

be a corporation (*ibid.*); the code does not require an exchange's attorney-in-fact to be a nonprofit corporation. An exchange's power of attorney and contracts may provide for the exercise of the subscribers' rights by a board. (§ 1307, subd. (d).) The board must be selected under rules adopted by the subscribers and is required to supervise the exchange's finances and operations to assure conformity with the subscriber's agreement and power of attorney. (§ 1308.) The board must be composed of subscribers or agents of subscribers; not more than one-third of the board members may be agents, employees or shareholders of the attorney-in-fact. (§ 1310.)

In accord with the modern trend toward accumulating unallocated reserves rather than distributing surplus to the subscribers, the directors of a modern ***705** California exchange may, but are not required to, return savings or credits to the subscribers. (§ 1420.) However, such distributions are permissible only if there is no impairment of the assets required to be maintained by sections 1370 and following. (*Ibid.*) [4]

4 Section 1370 provides for the forms of investment in which a reciprocal's surplus must be maintained. Section 1370.2 requires most reciprocal insurers to maintain minimum surplus governed by the same standards for minimum paid-in capital and surplus applicable to capital stock insurers. Section 1370.4 provides that reciprocal insurers established before October 1, 1961, were initially exempt from section 1370.2 and establishes a schedule of the dates after which such reciprocals became progressively subject to section 1370.2. Under the schedule in section 1370.4, all reciprocals were fully subject to section 1370.2 by 1976.
The minimum surplus requirements do not apply to all exchanges. An exchange formed by a local hospital district and its staff physicians under section 32000 et seq., of the Health and Safety Code is not subject to the above requirements if it meets alternative requirements. (§ 1284.)

In accord with the modern trend away from subscriber liability for a reciprocal's debts, section 1401 provides that, if an exchange maintains surpluses that are sufficiently beyond the legal minimum, it may obtain a certificate from the Insurance Commissioner authorizing the issuance of nonassessable policies. While such a certificate is in effect, subscribers have no contingent liability for claims, expenses or losses of the exchange. Under section 1401.5, an exchange which maintains surpluses of more than $3 million for five successive years may obtain a certificate of perpetual nonassessability. [5]

5 The Exchange obtained such a perpetual certificate in 1987.

If an exchange issues assessable policies, each subscriber is liable, beyond his or her annual premium, for assessments levied by the attorney-in-fact or the commissioner to satisfy claims against the exchange which exceed the exchange's surplus. (§§ 1391, 1392, 1398.) An exchange's power of attorney may limit the amount of assessments (§ 1397), but each subscriber's contingent liability must be at least

equal to one additional premium (§ 1398). The personal liability of subscribers can be asserted by the attorney-in-fact or the commissioner. (§ 1391.) However, if a debtor of the exchange obtains a judgment against the exchange, and it remains unsatisfied for 30 days, such debtor may proceed directly against the subscribers for any amount for which each subscriber could be assessed by the attorney-in-fact or the commissioner. (§§ 1450, 1451.) An individual subscriber can avoid liability for assessments, even if the exchange issues assessable policies, if the subscriber, in addition to his or her annual premium, maintains a surplus deposit in an amount equal to the annual premium. (§§ 1399, 1400.) ***706**

3. *Procedural History of This Action*

This action began as a challenge to the composition of the Board, which the plaintiffs claimed was in violation of section 1310.[6] On August 5, 1992, plaintiffs' attorney wrote a letter to the defendants' attorney, in which counsel said he had recently discovered that the Exchange was being operated in violation of section 1310, in that, of eight Board members listed in the letter, all were also directors or officers of the Club, and three were also directors or officers of ACSC. Counsel demanded that the entire Board resign and that control of the Exchange be vested in the subscribers. Counsel also expressed the view, among others, that the Exchange's policyholders should be the ones to determine the amount of surplus retained by the Exchange, and that the amount then retained appeared excessive. Counsel threatened a lawsuit if an agreement concerning the matters raised by his letter were not reached by August 14..

6 Section 1310 provides that: "Such body shall be composed of subscribers or agents of subscribers. Not more than one-third of the members serving on such body shall be agents, employees or shareholders of the attorney."

On August 21, 1992, the plaintiffs filed their original complaint. The defendants generally demurred, and on October 30, before the date set for the hearing on the demurrer, the plaintiffs filed a first amended complaint, in which they alleged that more than one-third of the Board members were agents, employees or shareholders of the attorney-in-fact, ACSC, in violation of section 1310. The plaintiffs also alleged that the Board's unlawful composition violated Business and Professions Code section 17200.[7] Plaintiffs prayed that the defendants be enjoined from continuing to allow the Board to be so constituted. They further alleged that, because of the unlawful constitution of the Board, its actions were not protected by the business judgment rule, respecting directors' discretion over the management of a company's funds, and consequently, the subscribers were entitled to an accounting and distribution of improperly retained surplus.

7 Business and Professions Code section 17200 provides that any "unlawful," "unfair," or "fraudulent" business act or practice is deemed to be unfair competition. Business and Professions Code section 17203 authorizes injunctive relief to prevent such conduct and/or restitution of

money or property wrongfully obtained "by means of such unfair competition."

A demurrer to the first amended complaint was sustained with leave to amend, and plaintiffs thereafter filed a second amended complaint, in which it was alleged that (1) the Board was not selected by subscribers, in what the plaintiffs now claimed was a violation of section 1308[8] ; (2) the subscribers were unlawfully deprived of control over the conduct of the Exchange; (3) ***707** the subscriber's agreement was a contract of adhesion; (4) the Board was a fiduciary of the subscribers; and (5) the Board had breached its fiduciary duties by failing to provide insurance at cost and by mismanaging and misappropriating surplus funds which rightfully belonged to the subscribers. The second amended complaint prayed for declaratory and injunctive relief, an accounting, a constructive trust over improperly held surplus and compensatory and punitive damages.

8 Section 1308 provides that: "The body exercising the subscribers' rights shall be selected under such rules as the subscribers adopt. It shall supervise the finances of the exchange and shall supervise its operations to such extent as to assure conformity with the subscriber's agreement and power of attorney."

After the filing of a demurrer to the second amended complaint, the action was referred to the Commissioner of Insurance pursuant to the "primary jurisdiction doctrine." (*Farmers Insurance Exchange v. Superior Court* (1992) 2 Cal.4th 377, 386-392 [6 Cal.Rptr.2d 487, 826 P.2d 730].) However, the commissioner refused to assume jurisdiction and also declined a request by the plaintiffs to intervene.[9] The trial court then sustained the defendants' demurrer to the second amended complaint with leave to amend and issued a detailed explanation of its ruling.

9 In an apparent effort to provide guidance to both the trial court and the parties, the commissioner did express the following comments: (1) The Exchange has no duty to limit its surplus funds to the statutory minimum surplus amount; (2) the Exchange has no duty to pay dividends; (3) Exchange subscribers do have ownership rights in surplus funds; (4) the Exchange has no duty to provide insurance coverage "at cost," but has a duty to exercise sound accounting principles in managing surplus; (5) the manner in which the Board is selected appears to violate section 1308 (see fn. 10, *post*); (6) the plaintiffs' challenge to the structure of the Board reflects inadequacies in the statutes governing reciprocals, which, in the commissioner's view, do not provide for sufficient accountability of reciprocal governing boards to subscribers; and (7) the question of how surplus funds of the Exchange should be disposed of upon any dissolution of the Exchange is not ripe for decision.

The court held, as a general matter, that the common law business judgment rule applies to the directors of a reciprocal insurer and precludes the courts from interfering with the management of such an insurer's surplus funds.

The court further held that the plaintiffs: (1) did not allege that the delegation of authority and waiver of the right of control over the Exchange, which is included in the subscriber's agreement, is contrary to section 1308; (2) did not allege sufficient facts to render the subscriber's agreement unenforceable under the doctrine of unconscionability set out in *Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211 Cal.App.3d 758 [259 Cal.Rptr. 789]; (3) cited no legal authority for their claim that a reciprocal insurer must provide insurance at cost; (4) did not plead facts showing that the Exchange maintained more than a reasonably necessary level of surplus; (5) did not allege facts which establish an exception to the business judgment rule; (6) cited no authority for their claim that, upon expiration of their policies, they have a legal right to repayment of sums paid by them and ***708** placed in surplus; (7) failed to state a presently cognizable claim of entitlement to a distribution of surplus upon dissolution of the Exchange; and (8) did not state facts sufficient to give the defendants notice of claimed misconduct by ACSC, for which expenses were allegedly incurred and then allegedly defrayed with funds properly belonging to the subscribers.

The plaintiffs' third amended complaint, the one before us, is substantially similar to the second. However, the plaintiffs have deleted their previous allegations that ACSC has committed misconduct for which the Exchange has incurred expenses and that the Board is illegally constituted.[10] The third amended complaint adds to the plaintiffs' previous allegations the further claims that: (1) an interinsurance exchange is similar to a joint venture, in which the general partners have fiduciary duties to the limited partners; and (2) the defendants have engaged in unlawful and fraudulent business practices, as defined in Business and Professions Code section 17200 by: (a) mismanaging Exchange funds; (b) failing to inform potential subscribers of all provisions of the Exchange's bylaws and rules and regulations; and (c) affirmatively representing in the subscriber's agreement that subscribers are not personally liable on judgments against the Exchange, a representation that plaintiffs claim is false.

10 For reasons not appearing in the record, the plaintiffs deleted the latter allegation despite the fact that the commissioner, in his letter to the trial court declining jurisdiction over the case, expressed the view that the manner of selecting the Exchange's Board appeared to violate section 1308. (See fns. 8 & 9, *ante*.) Inasmuch as the plaintiffs have apparently abandoned their claims respecting the selection and composition of the Board, and the trial court therefore did not take such claim into account, we shall give no further consideration to this issue.

The defendants again demurred, and this time the trial court sustained the demurrer without leave to amend. The trial court ruled essentially as it did on the previous demurrer, with additional findings that (1) there is no basis for the claim that an interinsurance exchange is a kind of joint venture, although an exchange's board and attorney-in-fact do have fiduciary duties to the subscribers; (2) subscribers of the Exchange are not liable beyond their premium deposits for judgments against the Exchange; and (3) neither the Exchange's failure to fully

spell out its rules in the subscriber's agreement nor the rules themselves are unconscionable.

A judgment of dismissal was then entered, and the plaintiffs filed this timely appeal.

Contentions

The plaintiffs challenge the practices of the Exchange, the Board and ACSC in managing surplus funds of the Exchange; they challenge the ***709** practices of the Club in marketing subscriptions to the Exchange. They contend that (1) the Exchange, the Board and ACSC mismanage Exchange funds by maintaining funds as unallocated surplus, rather than in subscriber savings accounts; (2) the Club misinformed them, when they became subscribers, as to the structure and rules of the Exchange, and consequently the plaintiffs are not bound by the subscriber's agreement, by which they delegated to the Board the authority to manage Exchange assets; (3) the defendants' mismanagement of Exchange assets and misrepresentations when marketing Exchange subscriptions constitute unlawful and fraudulent business practices under Business and Professions Code section 17200.

The plaintiffs further contend the Exchange should be compelled to (1) maintain surplus funds in subscriber savings accounts, and (2) expunge from its rules and regulations certain rules which limit subscribers' rights respecting surplus funds. They contend the Club should be compelled to disclose all material facts about the Exchange to future subscribers and make restitution to the Exchange's present and former subscribers of funds that were unlawfully and fraudulently obtained. Finally, plaintiffs claim the trial court abused its discretion in denying leave to amend the complaint.

Discussion

1. *Standard of Review*

(1) As this matter comes to us on a judgment of dismissal following the trial court's order sustaining the defendants' demurrer without leave to amend, we assume the truth of all properly pleaded facts, but not contentions, deductions or conclusions of fact or law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 [9 Cal.Rptr.2d 92, 831 P.2d 317].) Assuming the truth of the plaintiffs' factual allegations, we then independently determine whether they have alleged cognizable claims. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) As we shall explain, they have not.

2. *Issues Concerning the Ownership and Management of Surplus*

a. *Decisions as to the Manner of Maintaining Surplus Constitute Exercises of Business Judgment*

(2a) Plaintiffs make a point of distinguishing their claim—that the Exchange has a duty to maintain a substantial surplus in subscriber savings accounts—from claims like that made in *Barnes*, *supra*, 16 Cal.App.4th 365—that a corporation or other organization has a duty to pay a dividend or ***710** other distribution. In 1993, according to the plaintiffs, the Exchange had approximately $787 million in unallocated surplus funds, a surplus which is significantly greater than is required by law. The plaintiffs do not ask us to compel a distribution or otherwise

dictate actions affecting the *level* of surplus. Instead, they ask us to make orders respecting the *form* in which surplus is held. Specifically, the plaintiffs pray for an order requiring the Exchange to deposit into subscriber savings accounts all surplus that exceeds the legally required amounts.

The plaintiffs argue that the use of subscriber savings accounts will bring about substantial savings in federal taxes for the Exchange, because, under section 832(f) of the Internal Revenue Code (26 U.S.C. § 832(f)), surplus funds deposited by a reciprocal insurer into such accounts is not taxable income to the insurer, and under section 172(a) and (b) of the Internal Revenue Code (26 U.S.C. § 172(a), (b)), up to three years of prior taxes can be recaptured by depositing into subscriber accounts funds which were previously maintained as general surplus. The plaintiffs also argue that the use of subscriber savings accounts will protect subscribers' legitimate interests in surplus funds. Finally, they argue that subscriber savings accounts are successfully used by other reciprocal insurers.

The defendants and amici curiae respond with several arguments tending to show that deposits of surplus into subscriber saving accounts would reduce the funds which the Exchange could rely upon in the event of catastrophic losses, and thus would not be advantageous to the Exchange or its subscribers. However, the defendants do not ask us to resolve the question of whether the use of subscriber savings accounts would be beneficial. To the contrary. The defendants and amici contend the resolution of that question depends upon how one weighs the potential tax advantages of subscriber savings accounts against the risks entailed if large amounts of surplus are held in a form which can be withdrawn by subscribers. The defendants contend, and the trial court so held, that such a weighing of benefits against costs and risks is a prototypical application of business judgment. The defendants thus argue, and the trial court also so held, that, as is the case with other forms of business organization, courts may not interfere with such decisions of a reciprocal insurer if the decision made by the directors can be attributed to a rational business purpose. The defendants rely primarily on our decision in *Barnes*, *supra*, 16 Cal.App.4th 365 for this proposition.

We can hardly disagree with the proposition that decisions as to strategies for managing the surplus funds of an insurer are quintessential exercises of business judgment. Likewise, there can be no doubt that the courts are ***711** unqualified to second-guess the determinations made by an insurer, based upon actuarial analysis, as to the amount of funds that are reasonably necessary to assure adequate funds to cover catastrophic losses, or as to the optimal form in which the funds should be held. (*Barnes*, *supra*, 16 Cal.App.4th at p. 378; *Gaillard v. Natomas Co.* (1989) 208 Cal.App.3d 1250, 1263 [256 Cal.Rptr. 702].) Finally, assuring the availability of adequate funds to cover losses is plainly a rational business purpose for an insurer. Thus, if the business judgment rule applies to reciprocal insurers, it would preclude plaintiffs' efforts to dictate the form in which the Exchange maintains its surplus. (*Barnes*, *supra*, 16 Cal.App.4th at p. 378.)

(3) The business judgment rule is " 'a judicial policy of deference to the business judgment of corporate directors in the exercise of their broad discretion in making corporate decisions.' " (*Barnes*, *supra*, 16 Cal.App.4th at p. 378; *Gaillard v. Natomas Co.*, *supra*, 208 Cal.App.3d at p. 1263.) The rule is based on the premise that those to whom the management of a business organization has been entrusted, and not the courts, are best able to judge whether a particular act or transaction is helpful to the conduct of the organization's affairs or expedient for the attainment of its purposes. (*Barnes*, *supra*, 16 Cal.App.4th at p. 378; *Eldridge v. Tymshare, Inc.* (1986) 186 Cal.App.3d 767, 776 [230 Cal.Rptr. 815].) The rule establishes a presumption that directors' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the directors in good faith and in the absence of a conflict of interest. (*Katz v. Chevron Corp.* (1994) 22 Cal.App.4th 1352, 1366 [27 Cal.Rptr.2d 681]; *Barnes*, *supra*, 16 Cal.App.4th at pp. 379-380.)

(2b) In *Barnes*, we concluded that the rule applies to mutual insurance companies and that it precluded Barnes's effort to compel the defendant insurance company to pay a dividend. (16 Cal.App.4th at p. 378.) We now must consider whether the rule applies to reciprocals.

b. *The Governing Board of a Reciprocal Insurer Is Entitled to the Protection of the Business Judgment Rule*

The trial court in this case recognized that the business judgment rule is most commonly applied to corporations, but nevertheless held that "practical experience and common sense suggest that the rule is appropriately extended to members of the Board of Governors of the Exchange." We agree.

The plaintiffs contend that, for two reasons, the business judgment rule does not and should not apply to an interinsurance exchange. First, they contend there are significant differences between reciprocal insurers on the ***712** one hand and corporate and mutual insurers on the other, which make it inappropriate to apply the business judgment rule to reciprocals. In particular, the plaintiffs argue that, unlike the policyholders of a mutual insurer, subscribers to a reciprocal insurer execute subscriber's agreements and powers-of-attorney, which create contractual and fiduciary duties that are not subject to the business judgment rule. Secondly, they argue that section 1282, subdivision (a)(7) and (a)(20), preclude application to reciprocal insurers of the statutes governing corporations and mutual insurers, including the statutory business judgment rule stated in Corporations Code section 309.

The contention that the business judgment rule should not apply to reciprocal insurers because the boards and attorneys-in-fact of reciprocals are the agents of the subscribers and have fiduciary duties to them is without a legal basis. The existence of a fiduciary relationship between the board and the participants in an enterprise has never precluded application of the rule. For example, the courts have applied the business judgment rule to limited partnerships, although general partners are held to be agents and fiduciaries of the limited partners. (*Wallner v. Parry Professional*

Bldg., Ltd. (1994) 22 Cal.App.4th 1446, 1453-1454 [27 Cal.Rptr.2d 834]; *Wyler v. Feuer* (1978) 85 Cal.App.3d 392, 402 [149 Cal.Rptr. 626].) Similarly, the directors and controlling shareholders of for-profit corporations and the directors of nonprofit corporations and mutual insurance companies are deemed to be agents and fiduciaries of the shareholders and members (*Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 114-115 [81 Cal.Rptr. 592, 460 P.2d 464]; *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 505, 507 [229 Cal.Rptr. 456, 723 P.2d 573, 59 A.L.R.4th 447]; *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 31 [216 Cal.Rptr. 130, 702 P.2d 212]; *Barnes*, *supra*, 16 Cal.App.4th at p. 375), yet their management decisions are shielded by the business judgment rule. (*Frances T. v. Village Green Owners Assn.*, *supra*, 42 Cal.3d at pp. 507-509; *Katz v. Chevron Corp.*, *supra*, 22 Cal.App.4th at p. 1366; *Barnes*, *supra*, 16 Cal.App.4th at p. 379.)

Courts which have considered the relationship between a reciprocal insurer's board, its attorney-in-fact and its subscribers have concluded the relationship is analogous to the relationship between the directors, management and participants in other kinds of organizations. For example, at least one court has held that "[t]he position of the attorney-in-fact of a reciprocal insurance exchange, who manages the business of the exchange under powers of attorney of the subscribers ... is fiduciary in character *to the same extent as that of the management of an incorporated mutual insurance company* ...." (*Industrial Indem. Co. v. Golden State Co.* (1953) 117 Cal.App.2d 519, 533 [256 P.2d 677], italics added.) Another court has ***713** observed that a reciprocal insurer's "basic differences from [a mutual insurance company] are in mechanics of operation and in legal theory, rather than in substance." (*Cal. State Auto. etc. Bureau v. Downey* (1950) 96 Cal.App.2d 876, 880 [216 P.2d 882].)

If we look to the substance of the matter, it is clear that the relationship between the directors of a reciprocal insurer and its subscribers is identical in all significant ways to the relationship between the directors of any business organization and the organization's investors or other nonmanaging participants—*the directors are entrusted with the governance and management of the organization's affairs*. This being the case, the directors of a reciprocal exchange should be entitled to the protection of the business judgment rule to the same extent as the directors of other concerns. For reasons which have been fully discussed in numerous judicial authorities, California courts have consistently refused to interfere with directors' exercise of business judgment in making business decisions. (See, e.g., *Mutual Life Insurance v. City of Los Angeles* (1990) 50 Cal.3d 402, 417 [267 Cal.Rptr. 589, 787 P.2d 996] [declining to constrain insurers' business judgment as to how to maximize return on investment]; *Barnes*, *supra*, 16 Cal.App.4th at p. 378 [declining to interfere with insurer's business judgment as to level of surplus]; *Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858, 865-867 [137 Cal.Rptr. 528] [refusing to compel homeowners association to pay attorney fees incurred by member in enforcing "CC & R's"]; *Findley v. Garrett* (1952) 109 Cal.App.2d 166, 174-175 [240 P.2d 421]

[refusing to overturn directors' decision not to commence a lawsuit].)

Where the reason is the same, the rule should be the same. (Civ. Code, § 3511.) The boards of reciprocal insurers, based upon recommendations by the attorneys-in-fact, must make substantive financial decisions, such as setting and investing premiums and arriving at appropriate surplus levels, which are no different from those required of corporate and mutual insurers, and courts are no better qualified to second-guess the directors of reciprocal insurers than we are to second-guess the directors of other organizations as to similar decisions. Thus, for the same reasons that apply to other organizations, the courts may not interfere with the reasonable business decisions of reciprocal insurers. We therefore fully agree with the trial court's conclusion that practical experience and common sense require application of the business judgment rule to reciprocal insurers.

For the same reasons, we also reject the plaintiffs' claims that the defendants' management of Exchange funds constitutes an unlawful business practice. (Bus. & Prof. Code, § 17200.) Obviously, actions which are reasonable ***714** exercises of business judgment, are not forbidden by law, and fall within the discretion of the directors of a business under the business judgment rule cannot constitute unlawful business practices. (Cf. *Farmers' Ins. Exchange v. Superior Court*, *supra*, 2 Cal.4th at pp. 383-384.)

c. *Section 1282* Does Not Affect the Common Law Business Judgment Rule

(4) The plaintiffs claim section 1282 precludes application of the business judgment rule to reciprocal insurers. We disagree. The most that can be said for plaintiffs' argument is that it suggests reciprocal insurers are not subject to the *statutory* business judgment rule. (Corp. Code, § 309.) Section 1282 provides that certain provisions of the Insurance Code do not apply to reciprocal insurers. Among these are section 1140 and all of chapter 4 of part I, division 2, which relates to general mutual insurers. (§ 1282, subd. (a)(7) & (a)(20).) Section 1140 provides that incorporated insurers are subject to general corporation law; the statutes in chapter 4 of part I of division 2 set forth the special characteristics of mutual insurance plans. While section 1282 would seem to preclude application of Corporations Code section 309 to reciprocal insurers, it by no means precludes application of the common law business judgment rule.

The common law business judgment rule has two components—one which immunizes directors from personal liability if they act in accordance with its requirements, and another which insulates from court intervention those management decisions which are made by directors in good faith in what the directors believe is the organization's best interest. (2 Marsh & Finkle, Marsh's Cal. Corporation Law (3d ed., 1996 supp.) § 11.3, pp. 796-797.) Only the first component is embodied in Corporations Code section 309. Thus, even if Insurance Code section 1282 makes Corporations Code section 309 inapplicable to reciprocals, the second component of the common law rule is unaffected. It was, of course, the second component of the rule which we applied to mutual insurers in *Barnes*, *supra*,

16 Cal.App.4th 365, 378-379, and which we here apply to reciprocals.

d. *The Plaintiffs Have Not Alleged Facts Which Establish an Exception to the Business Judgment Rule*

(5a) The plaintiffs contend that even if the business judgment rule applies to reciprocal insurers, they have alleged facts constituting exceptions to the rule. Specifically, they allege that (1) the Exchange and the Board did not make a reasonable inquiry concerning the advisability of maintaining surplus in subscriber savings accounts, and (2) in managing surplus funds, ***715** the Exchange has acted for improper motives and as a result of a conflict of interest. It is, of course, true that the business judgment rule does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest. (*Gaillard v. Natomas Co.*, *supra*, 208 Cal.App.3d at pp. 1263-1264; *Eldridge v. Tymshare, Inc.*, *supra*, 186 Cal.App.3d at pp. 776-777.) However, the plaintiffs have not alleged sufficient facts to establish such exceptions in this case. More is needed to establish an exception to the rule than conclusory allegations of improper motives and conflict of interest. Neither is it sufficient to generally allege the failure to conduct an active investigation, in the absence of (1) allegations of facts which would reasonably call for such an investigation, or (2) allegations of facts which would have been discovered by a reasonable investigation and would have been material to the questioned exercise of business judgment.

(6) The business judgment rule sets up a *presumption* that directors' decisions are made in good faith and are based upon sound and informed business judgment. (*Barnes*, *supra*, 16 Cal.App.4th at p. 378; *Katz v. Chevron Corp.*, *supra*, 22 Cal.App.4th at pp. 1366-1367.) An exception to this presumption exists in circumstances which inherently raise an inference of conflict of interest. (*Id.* at p. 1367.) Such circumstances include those in which directors, particularly inside directors, take defensive action against a take-over by another entity, which may be advantageous to the corpor ation, but threatening to existing corporate officers. (*Ibid.*) Similarly, a conflict of interest is inferrable where the directors of a corporation which is being taken over approve generous termination agreements —"golden parachutes"—for existing inside directors. (*Gaillard v. Natomas Co.*, *supra*, 208 Cal.App.3d at pp. 1268-1271.) In situations of this kind, directors may reasonably be allocated the burden of showing good faith and reasonable investigation. (*Katz v. Chevron Corp.*, *supra*, 22 Cal.App.4th at p. 1367; cf. *Gaillard v. Natomas Co.*, *supra*, 208 Cal.App.3d at p. 1271 [under circumstances raising an inference that corporate interests were not served, trier of fact could find that directors should have independently reviewed the terms of challenged "golden parachutes"].) But in most cases, the presumption created by the business judgment rule can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts. (*Eldridge v. Tymshare, Inc.*, *supra*, 186 Cal.App.3d at p. 776-777.) Interference with the discretion of directors is not warranted in doubtful cases. (*Beehan v. Lido Isle Community Assn.*, *supra*, 70 Cal.App.3d 858, 865.)

(5b) The plaintiffs do not claim that the defendants failed to ascertain that federal tax savings could result from depositing surplus funds in subscriber savings accounts. The true thrust of their argument is that the ***716** defendants have refused to avail the Exchange of such savings. In effect, the argument is that the defendants' inquiry into the use of subscriber saving accounts was not a reasonable inquiry because the defendants reached a conclusion with which the plaintiffs disagree. However, it is the essence of the business judgment rule that the conclusions of an entity's directors concerning business strategy will not be scrutinized by the courts absent allegations of facts tending to show that the conclusions were based upon inadequate information or were made in bad faith.

The plaintiffs contend bad faith and overreaching are established by the facts that (1) the Club, the Exchange and ACSC have interlocking boards, (2) the Club appoints the Exchange's Board, and (3) the Exchange makes certain payments to the Club. Plaintiffs contend that, through the interlocking boards and the Club's power to appoint the Exchange's Board, the Club is able to exert undue influence on the Exchange's Board, resulting in the Exchange's (1) having a conflict of interest between the Club and its subscribers, (2) operating for the benefit of the Club and adverse to the interests of the subscribers, and (3) paying allegedly "secret profits" to the Club.

Plaintiffs claim that two categories of secret profits are paid to the Club: (1) current distributions to the Club and ACSC and (2) a contingent future interest retained by the Club in Exchange assets upon dissolution of the Exchange. The challenged current distributions consist of the following: (1) ACSC is compensated for its services to the Exchange at the actual cost of the services plus 1 percent of annual earned premiums; (2) ACSC, a wholly owned subsidiary of the Club, pays dividends to the Club; and (3) the Club receives directly from the Exchange 1 percent of the net annual premium deposits, a payment which the plaintiffs allege has exceeded $48 million since 1989.

The Club's contingent future interest in Exchange assets arises from rules 24 through 27 of the Exchange's rules and regulations. Rule 24 authorizes, but does not require, the Board to declare dividends and return savings to subscribers upon expiration of their policies; rule 25 declares that subscribers have no entitlement to a repayment of any sums upon expiration of their policies; rule 26 provides that, upon dissolution of the Exchange, all of its assets remaining after the repayment of debts are to become the property of the Club; rule 27 provides that rule 26 shall operate to the same effect and purpose as if each subscriber made an individual assignment to the Club of his or her interest in Exchange upon its dissolution. The plaintiffs claim the above rules effect a forfeiture of subscriber rights in Exchange assets.

The plaintiffs allege that the Exchange's decision to forfeit subscriber rights in favor of the Club is motivated by a desire to perpetuate the current ***717** and future transfers of Exchange assets to the Club and ACSC, not by the defendants' avowed purpose of funding adequate reserves against

contingencies. However, it is the very essence of the business judgment rule that, where a reasonable business purpose is asserted, the motives of directors will not be scrutinized, absent a basis for overcoming the presumption of good faith embodied by the business judgment rule. (*Katz v. Chevron Corp.*, *supra*, 22 Cal.App.4th at pp. 1366-1367.) Examples of such a basis include actions (1) which are inconsistent with the business purpose that is asserted (*Gaillard v. Natomas Co.*, *supra*, 208 Cal.App.3d at pp. 1269-1271 ["golden parachutes," which were challenged by the plaintiffs, encouraged officers of a taken-over corporation to leave the company, an effect inconsistent with the asserted corporate purpose of ensuring continuity of management]), (2) or which are so clearly against the interests of the affected organization that the challenged actions must have been the result of undue influence or a conflict of interest. (*Findley v. Garrett*, *supra*, 109 Cal.App.2d at p. 177.)

Here, the defendants assert they have determined it is prudent for the Exchange to maintain large unallocated surpluses in order to ensure that adequate funds will be available to cover the risks the Exchange insures. The plaintiffs have not alleged conduct which would establish that the defendants have acted for any other purpose. While the interlocking boards of the Club, the Exchange and ACSC may create an opportunity for the Club to exercise undue influence over the Exchange, that bare opportunity does not establish that fraud, bad faith or gross overreaching has actually occurred. Moreover, no facts are alleged which establish that the ongoing payments to ACSC of the actual costs of its services plus 1 percent of annual earned premiums, and to the Club of an additional 1 percent of annual earned premiums, are either inconsistent with the asserted goal of maintaining adequate reserves or so clearly against the interests of the Exchange and its subscribers that the payments must be the result of undue influence or a conflict of interest. The Club's contingent future interest in the surplus remaining upon dissolution of the Exchange is simply too remote and speculative to create a conflict of interest as to the disposition of present surplus in the absence of any showing or allegation the Exchange is at all likely to be dissolved within the foreseeable future.

In sum, the plaintiffs have not alleged facts which establish an exception to the business judgment rule. The trial court thus properly declined to interfere with the decisions of the Board respecting the management of surplus funds of the Exchange.

e. *Issues Respecting the Disposition of Accumulated Surplus Upon Dissolution of the Exchange Are Not Ripe for Decision*

(7) Little discussion need be devoted to the plaintiffs' claim that the Exchange must be compelled to expunge from its rules and regulations rules ***718** 26 and 27, which assign to the Club a contingent future interest in Exchange assets in the event of its dissolution. As we have observed above, there has been no showing nor any allegation of a likelihood that the Exchange will be dissolved within the foreseeable future. Moreover, if the Exchange is dissolved, the disposition of its assets will necessarily be overseen by the commissioner. (§ 1070 et seq.) Persons claiming an interest in the assets will have

the chance to challenge the Club's claims in the administrative proceedings. Under these circumstances, the trial court correctly held that the issue of whether the Club or the subscribers are entitled to Exchange assets upon dissolution is not now ripe for decision.

3. *Issues Concerning the Marketing of Subscriptions*

a. *Introduction*

(8) The business judgment rule was not the sole basis for the court's determination not to interfere with the Exchange's management of its surplus. The court also observed that Exchange subscribers agreed in the subscriber's agreement to grant the Board discretion concerning the maintenance and use of surplus, and they are bound by that agreement.

The plaintiffs claim they are not bound by limitations in the subscriber's agreement upon their claimed rights respecting surplus funds, because they were fraudulently induced to enter into the agreement. The plaintiffs contend the subscriber's agreement affirmatively and falsely represents to potential subscribers that subscribers have no personal liability for losses and debts of the Exchange, although sections 1450, 1451 and 1453 provide that a judgment creditor of a reciprocal insurance company can proceed directly against the subscribers if the judgment remains unsatisfied after 30 days. They also contend the subscriber's agreement fails to disclose the material facts that (1) an exchange's subscribers have inherent rights in the exchange's assets; (2) the representative's manual, which is provided to sales personnel of the Club, states that the Exchange is "organized as a not-for-profit reciprocal insurer" and that premium deposits which are not used to assure the adequacy of reserves against contingencies "are returned to subscribers as policyholder's dividends"; and (3) the ownership and distribution rights which subscribers have under general law and the Club's internal operating rules are limited by the rules and regulations of the Exchange. They contend the subscriber's agreement is an insurance contract of adhesion, requiring that any limitations upon subscriber rights must be plain and conspicuous, or will be denied enforcement. They cite *Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 808 [180 Cal.Rptr. 628, 640 P.2d 764]; *Ponder v. Blue Cross of Southern California* (1983) 145 Cal.App.3d 709, 719 [***719** 193 Cal.Rptr. 632]; and *Westrick v. State Farm Ins.* (1982) 137 Cal.App.3d 685, 692 [187 Cal.Rptr. 214] for this proposition.

The plaintiffs also contend that, by making the foregoing misrepresentations and failing to fully inform potential subscribers of the rules and regulations which govern the Exchange and the subscriber rights which are limited by the rules, the defendants have fraudulently induced subscribers to execute the subscriber's agreement, and therein have engaged in a fraudulent business practice within the meaning of Business and Professions Code section 17200.[11] The plaintiffs contend the defendants must make restitution to the Exchange's subscribers for all funds obtained through the misrepresentations and nondisclosures complained of.

11 We have recently held that an insured can maintain an action under section 17200 and following for acts by an

insurer amounting to fraud. (*State Farm Fire Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1110-1111 [53 Cal.Rptr.2d 229].)

There is no merit in the above claims. As we shall explain, all material representations in the subscriber's agreement are true, and no material facts are concealed.

b. *The Subscriber's Agreement Contains No Misrepresentations*

It is simply not true that the subscriber's agreement includes misrepresentations regarding subscribers' personal liability for the Exchange's debts. The truth is that, just as the subscriber's agreement states, "No present or future subscriber of the Exchange shall be liable in excess of the amount of his or her premium for any portion of the debts or liabilities of the Exchange." This is so, because, in 1987, the commissioner granted the Exchange a certificate of perpetual nonassessability pursuant to section 1401.5.

The plaintiffs insist that a certificate under section 1401.5 eliminates only a subscriber's liability for assessments by an exchange's attorney-in-fact or the commissioner; they contend the certificate has no effect upon subscribers' contingent liability to unpaid judgment creditors of an exchange. However, a fair reading of the statutes governing assessments (§ 1390 et seq.) and those governing lawsuits against reciprocal insurers (§ 1450 et seq.) demonstrates that this contention is not correct.

In the absence of a certificate of nonassessability, the subscribers of a reciprocal insurer are liable for "all liabilities" of the exchange, including claims, debts and any deficiency in required surplus. (§§ 1391-1392.) Subscriber liability is subject to certain limits which are stated in the statutes and other limits which may be stated in an exchange's power of attorney. ***720** (§§ 1397-1400.) Whenever the assets of an exchange are insufficient to meet *all* of its liabilities of every kind and maintain the required surplus, an assessment must be made by the attorney-in-fact or by the commissioner. (§ 1391.) Subscribers are required to pay their proportionate share of assessments, except as provided by statute. (§ 1392.)

Contrary to the plaintiffs' argument, nothing in sections 1391, 1392 or the statutes governing lawsuits against reciprocals suggests that liabilities to judgment creditors are not among the liabilities for which assessments must be made. It is quite correct that, if a judgment is obtained against an exchange, and it is not paid within 30 days either out of the exchange's surplus or through an assessment, the judgment creditor is entitled to proceed directly against the subscribers. (§ 1451.) However, a subscriber's liability to a judgment creditor is limited to "such proportion as his interest may appear." (§ 1450.) This limitation logically means that a subscriber is liable for the amount for which each subscriber could be assessed by the attorney-in-fact or the commissioner. For subscribers of exchanges which issue assessable policies, that amount is limited to an amount equal and in addition to one annual premium, or any greater amount which is provided in the exchange's power of attorney. (§§ 1397, 1398; cf. *Mitchell v. Pacific Greyhound Lines* (1939) 33 Cal.App.2d

53, 66-68 [91 P.2d 176] [Upon liquidation of the California Highway Indemnity Exchange, subscribers' liability to creditors was limited to the amount agreed upon in the subscribers' agreement, namely an amount in addition and equal to each subscriber's annual premium].) [12] For subscribers of exchanges that are exempt from assessments under section 1401 or 1401.5, there is *no liability* beyond the ***721** subscriber's paid premium for any debts of the exchange, including judgment debts.

12 *Mitchell* is the only case of which we are aware, which considers the manner in which subscriber liability may be enforced by judgment creditors of an exchange. The defendants, who were subscribers of the exchange, contended that any personal liability which they might have to the exchange's creditors *must* be enforced by actions brought by the creditors directly against each subscriber, and could not be enforced through an assessment. (33 Cal.App.2d at pp. 61, 64.) The Court of Appeal rejected this contention and ruled that, under the exchange's subscriber agreement, the then existing statutes governing reciprocals and the then existing liquidation statutes, subscriber liability to exchange creditors, like other obligations, was enforceable through an assessment. (*Id.* at pp. 64-65.) It is even more clear today than it was when *Mitchell* was decided that subscriber liability to an exchange's judgment creditors is one of the obligations covered by subscriber liability for assessments, and is not, as the plaintiffs contend, a distinct obligation unaffected by a certificate of nonassessability. The *Mitchell* court observed that the statute then governing subscribers' contingent liability gave exchanges "the right to limit 'the contingent liability for the payment of losses' but not for other expenses." (*Id.* at p. 60.) The present statutes are more inclusive. Section 1391 provides that assessments must be made when an exchange is not possessed of admitted assets sufficient to discharge "all liabilities" and maintain required surplus. Section 1397 allows an exchange to limit liability for "assessments *under this article* [i.e.. article 6 (§§ 1391-1400.5) of chapter 3 ("Reciprocal Insurers") of part 2 of division 1 of the Insurance Code)]...."

The Exchange has obtained a certificate of perpetual nonassessability under section 1401.5. The representation in subscriber agreements executed since 1987, that "no present or future subscriber of the Exchange shall be liable in excess of the amount of his or her premium for any portion of the debts or liabilities of the Exchange," is thus true. [13]

13 In their reply, plaintiffs assert that the existence of the Exchange's certificate under section 1401.5 *establishes* the *falsity* of the representation that subscribers are not personally liable for Exchange debts. They base this assertion upon language in section 1401.5, subdivision (b), which states that an exchange which obtains an order of perpetual nonassessability

"shall no longer be subject to or entitled to the benefits of: subdivision (c) of Section 1307 ... and Article 6 (commencing with Section 1390) of this chapter." Article 6 provides for assessments; section 1307, subdivision (c) authorizes limits upon assessments. We disagree with the plaintiffs' reading of the provision in section 1401.5, subdivision (b), that article 6 and section 1307, subdivision (c), do not apply to a holder of a perpetual nonassessability certificate. That provision can only sensibly mean that an exchange whose subscribers have *no* personal liability for its debts will have no need to provide in its power of attorney for *limits* to such liability.

c. *The Subscriber's Agreement Does Not Conceal Material Facts*

(9a) The plaintiffs contend that, because the subscriber's agreement is an insurance contract of adhesion, any limitations upon subscriber rights must be plain and conspicuous, or such limitations will be denied enforcement. (See *Reserve Insurance Co. v. Pisciotta*, *supra*, 30 Cal.3d at p. 808; *Ponder v. Blue Cross of Southern California*, *supra*, 145 Cal.App.3d at p. 719; *Westrick v. State Farm Ins.*, *supra*, 137 Cal.App.3d at p. 692; see also *Shepard v. Cal. Life Ins. Co., Inc.* (1992) 5 Cal.App.4th 1067, 1077 [7 Cal.Rptr.2d 428].) Plaintiffs claim that the limitations which the subscriber's agreement places upon their rights of ownership and control of surplus are not plain and conspicuous, hence the subscriber's agreement is not binding upon them.

Initially, we note that the plaintiffs are relying upon principles stated in *Reserve Insurance*, *Ponder*, and related cases, which exist to protect an insured's reasonable expectations of *coverage.* The rights which plaintiffs assert here are of a different character, being more analogous to rights held by a shareholder in a corporation, and it is not clear that the principles stated in *Reserve Insurance* and *Ponder* should apply with the same force and effect to rights other than coverage. However, assuming arguendo that they do, we nevertheless are unable to conclude that the reasonable expectations of Exchange subscribers are frustrated by the matters complained of in this lawsuit. ***722**

(10) There are two limitations upon the enforcement of insurance contracts, adhesion contracts generally, or provisions thereof. First, a contract or provision which does not fall within the reasonable expectations of the weaker or adhering party will not be enforced against him or her. (*Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 669-670 [42 Cal.Rptr.2d 324, 897 P.2d 1]; *California Grocers Assn. v. Bank of America* (1994) 22 Cal.App.4th 205, 213 [27 Cal.Rptr.2d 396].) Secondly, even if the contract or provision is consistent with the reasonable expectations of the parties, it will not be enforced if it is unduly oppressive or unconscionable. (*California Grocers Assn. v. Bank of America*, *supra*, 22 Cal.App.4th at p. 213; *Dean Witter Reynolds, Inc. v. Superior Court*, *supra*, 211 Cal.App.3d at pp. 767-768.)

(9b) Here, we have already concluded that the challenged provisions of the subscriber's agreement are in accord with well-established

principles of law under which the directors of an insurance concern have discretion in the management of surplus funds. It follows that, as the trial court found, the provisions are not unduly oppressive or unconscionable. However, we must consider whether they are within the reasonable expectations of the parties.

The plaintiffs claim that, as subscribers of the Exchange, they have reasonable expectations of distributions of surplus, either as dividends, withdrawal rights upon expiration of their policies, or an interest in Exchange assets upon its dissolution. It is axiomatic that the reasonable expectations of the parties to a contract are defined in the first instance by the provisions of the contract. In this case, that would be the subscriber's agreement. However, the plaintiffs base their claims not upon the subscriber's agreement, but upon matters outside of it. Specifically, they base their claim upon (1) supposed obligations of reciprocal insurers in general, and (2) statements in the Club's representative's manual to the effect that the Exchange is organized as a not-for-profit reciprocal insurer, that premium deposits collected from subscribers are to be at the lowest level necessary to pay losses and expenses and to fund adequate reserves, and that deposits not used for these purposes are returned to subscribers as dividends.

The plaintiffs claim that the subscriber's agreement conceals from potential subscribers that (1) the subscribers of an interinsurance exchange have property interests in the exchange's surplus funds and (2) such property interests of Exchange subscribers are purportedly waived by provisions in the subscriber's agreement by which subscribers agree to give the Board discretion over the management of surplus. The plaintiffs further contend that the nondisclosures in the subscriber's agreement are exacerbated by the ***723** fact that the Exchange's rules and regulations are not provided to prospective subscribers except upon request, and the Club's sales personnel do not discuss them. Thus, unless a subscriber makes extraordinary efforts, he or she is kept unaware of ownership rights of subscribers in the Exchange's assets and is likewise kept unaware of rules 26 and 27 in the Exchanges rules and regulations, by which subscribers' ownership rights are allegedly forfeited. Finally, the plaintiffs contend that potential subscribers are misled and confused by the placement of the signature line on the form which serves both as the Exchange's application for insurance and as its subscriber's agreement. The plaintiffs complain that the text of the subscriber's agreement and the signature line appear on separate pages, with the result that many potential subscribers do not read the subscriber's agreement or even notice that they are executing such an agreement. The plaintiffs claim that, through the combined impacts of the material nondisclosures in the subscriber's agreement, the failure of Club personnel to inform potential subscribers of Exchange rules and regulations, and the misleading placement of the subscriber's agreement signature line, consumers are deceived into believing they are only purchasing insurance and never realize they are in truth becoming participants in an insurance enterprise in which they have an interest as owners as well as insureds.

The above contentions are without merit. First, the claims based upon general law are

mistaken. As we have observed, the plaintiffs' claim that reciprocal insurers generally have an obligation to return surplus to their subscribers is based upon a misunderstanding of the nature of a California reciprocal insurer, as presently defined in the Insurance Code. Whatever may have been the case in the past, California reciprocal insurers of the present day have no obligation to disburse accumulated surplus to subscribers or to maintain it in a form which can be withdrawn by subscribers upon departure from the exchange. Under the Insurance Code, disbursements and withdrawal rights are entirely at the discretion of the insurers' directors. (§ 1420.) Where the plaintiffs have no withdrawal rights or rights to disbursements of Exchange surplus under general laws governing reciprocal insurers, they can have no reasonable expectation of such rights, and there is no basis for claiming they were fraudulently induced to waive them. Secondly, the plaintiffs cannot legitimately claim rights based upon the Club's representative's manual, which describes the Exchange's vision of itself as a not-for-profit enterprise and its aspirations to distribute to subscribers surplus that is not needed to maintain adequate reserves. The manual is an internal document, is not intended to be communicated to potential subscribers, and makes no promises to them.

In truth, the reasonable expectation of one who executes a subscriber's agreement with the Exchange is that he or she is purchasing insurance and ***724** *may*, in the discretion of the Board, receive dividends or other distributions. Plaintiffs do not complain that they have not obtained the coverage for which they bargained. [14] Instead, they contend that, in addition to the bargained-for coverage, they are entitled to the distributions which are plainly designated in the subscriber's agreement as discretionary. However, they allege no factual or legal basis for such entitlement.

14 Nor, as the trial court observed, do the plaintiffs complain that they are charged an unreasonable rate for their coverage.

In sum, under the law governing reciprocal insurance companies, all representations in the subscriber's agreement are truthful, and the plaintiffs' objectively reasonable expectations of insurance coverage based upon the agreement have been met. There is thus no basis for the plaintiffs' argument that they were fraudulently induced to execute the agreement and are therefore not bound by it. For the same reasons, the plaintiffs have not established either that the subscriber's agreement is fraudulent, or that the Exchange's management of surplus is unlawful within the meaning of Business and Professions Code section 17200. The trial court thus correctly sustained the defendants' demurrers.

4. *Leave to Amend*

(11) Finally, the trial court properly sustained the defendants' demurrer without leave to amend. An order sustaining a demurrer without leave to amend is unwarranted and constitutes an abuse of discretion if there is a reasonable possibility that the defect can be cured by amendment (*Aubry v. Tri-City Hospital Dist.*, *supra*, 2 Cal.4th at p. 967), but it is proper to sustain a demurrer without leave to amend if it is probable from the nature of the defects and previous unsuccessful attempts to plead that plaintiff cannot state a cause of action.

(*Krawitz v. Rusch* (1989) 209 Cal.App.3d 957, 967 [257 Cal.Rptr. 610].) Plaintiffs have had three opportunities to amend their complaint and have been unable to successfully state a cause of action against the defendants. Moreover, the defects in the complaints have not been defects of form. Rather, the problem is that plaintiffs seek judicial intervention in management decisions as to the level and form of surplus funds of the Exchange. Under well-established rules devised in enterprises to which the Exchange is sufficiently analogous, these matters lie within the discretion of the Board and management of the Exchange, where these institutions act in good faith. The plaintiffs having failed to allege facts which tend to establish an absence of good faith and reasonable inquiry, no cause of action exists by which the defendants' actions can be challenged. ***725**

Disposition

The judgment of dismissal is affirmed. Costs on appeal are awarded to the defendants.

Kitching, J., and Aldrich, J., concurred.

A petition for a rehearing was denied December 2, 1996, and appellants' petition for review by the Supreme Court was denied January 22, 1997. ***726**