

Reference Material 1.

Internet Corporation for Assigned Names and Numbers

ABOUT US (/EN/ABOUT) › GOVERNANCE (/EN/ABOUT/GOVERNANCE)

ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

29

As Revised November 21, 1998

1. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the "Corporation").
2. The name of the Corporation's initial agent for service of process in the State of California, United States of America is C T Corporation System.
3. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501 (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any further United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 5 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP (Intellectual Property; or Internet Protocol)") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS (Domain Name System)"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS (Domain Name System) root server system; (iv) overseeing operation of the authoritative Internet DNS (Domain Name System) root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).
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.
5. Notwithstanding any other provision (other than Article 8) of these Articles:
 - a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501 (c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170 (c)(2) of the Code.
 - b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.
 - c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
 - d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and

empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.

e. In no event shall the Corporation be controlled directly or indirectly by one or more "disqualified persons" (as defined in § 4946 of the Code) other than foundation managers and other than one or more organizations described in paragraph (1) or (2) of § 509 (a) of the Code.

6. To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation or its members, should the Corporation elect to have members in the future, for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this Article 6 shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.

7. Upon the dissolution of the Corporation, the Corporation's assets shall be distributed for one or more of the exempt purposes set forth in Article 3 hereof and, if possible, to a § 501 (c)(3) organization organized and operated exclusively to lessen the burdens of government and promote the global public interest in the operational stability of the Internet, or shall be distributed to a governmental entity for such purposes, or for such other charitable and public purposes that lessen the burdens of government by providing for the operational stability of the Internet. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as such court shall determine, that are organized and operated exclusively for such purposes, unless no such corporation exists, and in such case any assets not disposed of shall be distributed to a § 501(c)(3) corporation chosen by such court.

8. Notwithstanding anything to the contrary in these Articles, if the Corporation determines that it will not be treated as a corporation exempt from federal income tax under § 501(c)(3) of the Code, all references herein to § 501(c)(3) of the Code shall be deemed to refer to § 501(c)(6) of the Code and Article 5(a)(ii), (b), (c) and (e) shall be deemed not to be a part of these Articles.

9. These Articles may be amended by the affirmative vote of at least two-thirds of the directors of the Corporation. When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment.

[Welcome \(/en/about/welcome\)](/en/about/welcome)

[Learning \(/en/about/learning\)](/en/about/learning)

[Participate \(/en/about/participate\)](/en/about/participate)

[Board \(http://www.icann.org/en/groups/board\)](http://www.icann.org/en/groups/board)

[CEO \(http://www.icann.org/en/about/ceo\)](http://www.icann.org/en/about/ceo)

[Staff \(/en/about/staff\)](/en/about/staff)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1 \)](https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1)

[Governance \(/en/about/governance\)](/en/about/governance)

[Guidelines \(/en/about/governance/guidelines\)](/en/about/governance/guidelines)

[Articles of Incorporation \(/en/about/governance/articles\)](/en/about/governance/articles)

[Bylaws \(/en/about/governance/bylaws\)](/en/about/governance/bylaws)

[Board Documents \(http://www.icann.org/en/groups/board/documents\)](http://www.icann.org/en/groups/board/documents)

Board Code of Conduct (<http://www.icann.org/en/groups/board/governance/code-of-conduct>)

Board Conflicts of Interest Policy (<http://www.icann.org/en/groups/board/governance/coi>)

Board Statements of Interest (<http://www.icann.org/en/groups/board/sois>)

Summary of Conflicts of Interest and Ethics Practices Review (</en/about/governance/coi/summary-ethics-review-13may13-en>)

Agreements (</en/about/agreements>)

Accountability & Transparency (<http://www.icann.org/en/news/in-focus/accountability>)

AOC Review (</en/about/aoc-review>)

Annual Report (</en/about/annual-report>)

Financials (</en/about/financials>)

Document Disclosure (</en/about/transparency>)

Planning (</en/about/planning>)

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ICANN Network

myICANN (<http://www.myicann.org/>)

ASO (<http://aso.icann.org>)

ALAC (<http://www.atlarge.icann.org>)

ccNSO (<http://ccnso.icann.org>)

GAC (<http://gac.icann.org>)

GNSO (<http://gnsso.icann.org>)

RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

[Community Wiki \(http://community.icann.org\)](http://community.icann.org)

[Meetings \(http://meetings.icann.org\)](http://meetings.icann.org)

[New gTLDs \(http://newgtlds.icann.org\)](http://newgtlds.icann.org)

[WHOIS \(http://whois.icann.org\)](http://whois.icann.org)

[Help](#)

[\(/en/help\)](#)

[Acronym Helper](#)

Reference Material 2.

Internet Corporation for Assigned Names and Numbers

ABOUT US (/EN/ABOUT) › GOVERNANCE (/EN/ABOUT/GOVERNANCE)

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

66

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Italiano (/it/about/governance/by aws) | Japanese (/ja/about/governance/by aws) | Korean (/ko/about/governance/by aws)

Português (/pt/about/governance/by aws) | Русский (/ru/about/governance/by aws) | Vietnamese (/vi/about/governance/by aws)

العربية (/ar/about/governance/by aws)

As amended 11 April 2013

TABLE OF CONTENTS

ARTICLE I: MISSION AND CORE (Council of Registrars) 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, REGISTRARS, EMPLOYEES, AND OTHER AFFILIATES	
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 (Council of Registrars) 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 (Intellectual Property; or Internet Protocol)") addresses and autonomous system ("AS") numbers; and
 - c. 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 (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.
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 value 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

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 System Registry or Registrar or Internet 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, and 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 the 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 (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 (as set forth in Articles VIII - X of these Bylaws) and 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 and take duly into account any advice timely presented by the Governmental 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) shall 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, 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, each Supporting Organization Council, each Advisory Committee (other than the Governmental 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 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 or 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 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 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 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 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 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 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 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 (Intellectual Property; or Internet Protocol) 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 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 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 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 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 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 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 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 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 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;
- b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;
- c. One appointed by the Security and Stability 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, notice must be provided to that 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 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, 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 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, in which case that vacancy shall be filled by that 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 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, 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 established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security and Stability Advisory Committee established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee;
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large 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, 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 established by Article IX of these Bylaws;
- b. The Council of the Address 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 (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), 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 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 (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, 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 or 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; (b) the At-Large 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 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.

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.

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-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 (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 and/or 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 comprising 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 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. SPECIFIC ADVISORY COMMITTEES

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.
- b. 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.
- c. 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.
- d. 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.
- e. Each member of the Governmental 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 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 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.
- h. 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 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 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 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 advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental 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 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.

2. Security and Stability Advisory Committee

a. The role of the Security and Stability 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, 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

a. The role of the Root Server System Advisory Committee ("RSSAC") 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 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 with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the 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 shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.

1. 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 chairs 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 chairs 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 to power to remove RSSAC appointees as recommended by or in consultation with the RSSAC. (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 shall be comprised as stated in the Bylaws as amended 16 March 2012, and the RSSAC chairs shall recommend the re-appointment of all current RSSAC members to full or partial terms as appropriate to implement the provisions of this paragraph.)
2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC 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

a. The At-Large 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, 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 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. 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 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 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 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, with the suggestion that the request be transmitted by the Governmental 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, 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 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-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-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-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, 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 Number 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 Number or its 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 CNPBC, 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, any 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 agent 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 reasonable 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 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 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, 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 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 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 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 and the Governmental 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 ("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 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 shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental 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 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 and Stability 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 and Stability 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 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 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

- a. There shall exist an Interim At-Large 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 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 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 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 shall become the At-Large 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 by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.
- d. Promptly upon its creation, the Interim At-Large 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 ("PDF (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 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 (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, 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 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 (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, 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 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 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 or Advisory Committee.* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization or an ICANN (Internet Corporation for Assigned Names and Numbers) 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 Lines 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 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 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 and 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, 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 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 (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, 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 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 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 counterbalance to the executive role, the accountability role needs to be 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 \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#)

Executive role: Root Server System Operators

Accountability role: [RSSAC \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#), ([US DoC-ICANN 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

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

Executive role: Registrant

Accountability role: Registrant, users of lower-level domain names

[Welcome \(/en/about/welcome\)](/en/about/welcome)

[Learning \(/en/about/learning\)](/en/about/learning)

[Participate \(/en/about/participate\)](/en/about/participate)

[Board \(http://www.icann.org/en/groups/board\)](http://www.icann.org/en/groups/board)

[CEO \(http://www.icann.org/en/about/ceo\)](http://www.icann.org/en/about/ceo)

[Staff \(/en/about/staff\)](/en/about/staff)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1 \)](https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1)

[Governance \(/en/about/governance\)](/en/about/governance)

[Guidelines \(/en/about/governance/guidelines\)](/en/about/governance/guidelines)

[Articles of Incorporation \(/en/about/governance/articles\)](/en/about/governance/articles)

[Bylaws \(/en/about/governance/bylaws\)](/en/about/governance/bylaws)

[Archive \(/en/about/governance/bylaws/archive\)](/en/about/governance/bylaws/archive)

[Board Documents \(http://www.icann.org/en/groups/board/documents\)](http://www.icann.org/en/groups/board/documents)

[Board Code of Conduct \(http://www.icann.org/en/groups/board/governance/code-of-conduct\)](http://www.icann.org/en/groups/board/governance/code-of-conduct)

[Board Conflicts of Interest Policy \(http://www.icann.org/en/groups/board/governance/coi\)](http://www.icann.org/en/groups/board/governance/coi)

[Board Statements of Interest \(http://www.icann.org/en/groups/board/sois\)](http://www.icann.org/en/groups/board/sois)

[Summary of Conflicts of Interest and Ethics Practices Review \(/en/about/governance/coi/summary-ethics-review-13may13-en\)](/en/about/governance/coi/summary-ethics-review-13may13-en)

[Agreements \(/en/about/agreements\)](/en/about/agreements)

[Accountability & Transparency \(http://www.icann.org/en/news/in-focus/accountability\)](http://www.icann.org/en/news/in-focus/accountability)

[AOC Review \(/en/about/aoc-review\)](/en/about/aoc-review)

[Annual Report \(/en/about/annual-report\)](/en/about/annual-report)

[Financials \(/en/about/financials\)](/en/about/financials)

[Document Disclosure \(/en/about/transparency\)](/en/about/transparency)

[Planning \(/en/about/planning\)](/en/about/planning)

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[Facebook \(http://www.facebook.com/icannorg\)](http://www.facebook.com/icannorg)

[ICANN Blog \(http://blog.icann.org/\)](http://blog.icann.org/)

[Community Wiki \(https://community.icann.org/\)](https://community.icann.org/)

[Planet ICANN \(/en/groups/planet-icann\)](/en/groups/planet-icann/)

[RSS Feeds \(/en/news/rss\)](/en/news/rss)

- [myICANN \(http://www.my-cann.org/\)](http://www.my-cann.org/)
- [ASO \(http://aso.cann.org\)](http://aso.cann.org)
- [ALAC \(http://www.at-arge.cann.org\)](http://www.at-arge.cann.org)
- [ccNSO \(http://ccnso.cann.org\)](http://ccnso.cann.org)
- [GAC \(http://gac.cann.org\)](http://gac.cann.org)
- [GNSO \(http://gnso.cann.org\)](http://gnso.cann.org)
- [RSSAC \(/en/groups/rssac\)](/en/groups/rssac)
- [SSAC \(/en/groups/ssac\)](/en/groups/ssac)
- [Community Wiki \(http://community.cann.org\)](http://community.cann.org)
- [Meetings \(http://meetings.cann.org\)](http://meetings.cann.org)
- [New gTLDs \(http://newglds.cann.org\)](http://newglds.cann.org)
- [WHOIS \(http://whois.cann.org\)](http://whois.cann.org)
- Help

[\(/en/help\)](/en/help)
Acronym Helper

Reference Material 3.

Internet Corporation for Assigned Names and Numbers

[ABOUT US \(/EN/ABOUT\)](#) › [GOVERNANCE \(/EN/ABOUT/GOVERNANCE\)](#) › [BYLAWS \(/EN/ABOUT/GOVERNANCE/BYLAWS\)](#)

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

As amended 16 March 2012

TABLE OF CONTENTS

ARTICLE I: MISSION AND <u>CORE (Council of Registrars)</u> 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: <u>GNSO (Generic Names Supporting Organization)</u> POLICY DEVELOPMENT PROCESS
ANNEX B: <u>ccNSO (Country Code Names Supporting Organization)</u> POLICY-DEVELOPMENT PROCESS (ccPDP)
ANNEX C: THE SCOPE OF THE <u>ccNSO (Country Code Names Supporting Organization)</u>

ARTICLE I: MISSION AND CORE (Council of Registrars) 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 (Intellectual Property; or Internet Protocol)") addresses and autonomous system ("AS") numbers; and
 - c. 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 (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.
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 value 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

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 System Registry or Registrar or Internet 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, and 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 the 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 (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 (as set forth in Articles VIII - X of these Bylaws) and 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 and take duly into account any advice timely presented by the Governmental 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) shall 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 of 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.

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. determine whether a stay of the contested action pending resolution of the request is appropriate;

c. conduct whatever factual investigation is deemed appropriate;

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

e. make a recommendation to the Board of Directors on the merits of the request.

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 which 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 thirty days after:

a. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a preliminary report or minutes of the Board's meetings; 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. All Reconsideration Requests must include the information required by the Board Governance Committee, which shall include at least the following information:

- a. name, address, and contact information for the requesting party, including postal and e-mail addresses;
- b. the specific action or inaction of ICANN (Internet Corporation for Assigned Names and Numbers) for which review or reconsideration is sought;
- c. the date of the action or inaction;
- d. the manner by which the requesting party will be affected by the action or inaction;
- e. the extent to which, in the opinion of the party submitting the Request for Reconsideration, the action or inaction complained of adversely affects others;
- f. whether a temporary stay of any action complained of is requested, and if so, the harms that will result if the action is not stayed;
- g. in the case of staff action or inaction, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN (Internet Corporation for Assigned Names and Numbers) policy(ies);
- h. in the case of Board action or inaction, a detailed explanation of the material information not considered by the Board and, if the information was not presented to the Board, the reasons the party submitting the request did not submit it to the Board before it acted or failed to act;
- i. what specific steps the requesting party asks ICANN (Internet Corporation for Assigned Names and Numbers) to take-i.e., whether and how the action should be reversed, cancelled, or modified, or what specific action should be taken;
- j. the grounds on which the requested action should be taken; and
- k. any documents the requesting party wishes to submit in support of its request.

7. All Reconsideration Requests shall be posted on the Website..

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.

9. The Board Governance Committee shall review Reconsideration Requests promptly upon receipt and announce, within thirty days, its intention to either decline to consider or proceed to consider a Reconsideration Request after receipt of the Request. The announcement shall be posted on the Website.

10. The Board Governance Committee announcement of a decision not to hear a Reconsideration Request must contain an explanation of the reasons for its decision.

11. The Board Governance Committee may request additional information or clarifications from the party submitting the Request for Reconsideration.

12. 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.

13. If the Board Governance Committee requires additional information, it may elect to conduct a meeting with the party seeking Reconsideration by telephone, e-mail or, if acceptable to the party requesting reconsideration, in person. 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.

14. 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.

15. 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.

16. To protect against abuse of the reconsideration process, a request for reconsideration may be dismissed by the Board Governance Committee where it is repetitive, frivolous, non-substantive, or otherwise abusive, or where the affected party had notice and opportunity to, but did not, participate in the public comment period

relating to the contested action, if applicable. Likewise, the Board Governance Committee may dismiss a request when the requesting party does not show that it will be affected by ICANN (Internet Corporation for Assigned Names and Numbers)'s action.

17. The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within ninety 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 recommendation. The final recommendation shall be posted on the Website.

18. 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.

19. 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;
- b. the number of Reconsideration Requests on which the Board Governance Committee has taken action;
- c. the number of Reconsideration Requests that remained pending at the end of the calendar year and the average length of time for which such Reconsideration Requests have been pending;
- d. a description of any Reconsideration Requests that were pending at the end of the calendar year for more than ninety (90) days and the reasons that the Board Governance Committee has not taken action on them;
- e. the number and nature of Reconsideration Requests that the Board Governance Committee declined to consider on the basis that they did not meet the criteria established in this policy;
- f. for Reconsideration Requests that were denied, 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
- g. 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.

20. Each annual report shall also aggregate the information on the topics listed in paragraph 19(a)-(e) of this Section for the period beginning 1 January 2003.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, 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.
3. Requests for such independent review shall be referred to an Independent Review Panel ("IRP"), 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.
4. The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN (Internet Corporation for Assigned Names and Numbers) ("the IRP Provider") using arbitrators under contract with or nominated by that provider.
5. 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.
6. Either party may elect that the request for independent review be considered by a three-member panel; in the absence of any such election, the issue shall be considered by a one-member panel.
7. The IRP Provider shall determine a procedure for assigning members to individual panels; provided that if ICANN (Internet Corporation for Assigned Names and Numbers) so directs, the IRP Provider shall establish a standing panel to hear such claims.
8. The IRP shall have the authority to:
 - a. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
 - b. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
 - c. 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.
9. 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 IRP.
10. In order to keep the costs and burdens of independent review as low as possible, the IRP should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.
11. The IRP shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.
12. Declarations of the IRP shall be in writing. The IRP 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 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.
13. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on the Website when they become available.
14. The IRP may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
15. Where feasible, the Board shall consider the IRP declaration at the Board's next meeting.

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, each Supporting Organization Council, each Advisory Committee (other than the Governmental 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 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 or 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 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 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 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 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 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 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 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 (Intellectual Property; or Internet Protocol) 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 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 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 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 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 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 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 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 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 Mid-year Meeting after ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting in 2011. The next terms of Seats 9 and 12 shall begin at the conclusion of the Mid-year Meeting occurring after the 2011 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2011;
- e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mid-year Meeting after the 2012 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting. The next terms of Seats 10 and 13 shall begin at the conclusion of the Mid-year Meeting occurring after the 2012 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2012; and
- f. The terms of Seats 11 and 14 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mid-year Meeting after the 2010 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting, and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2010.
- g. The first regular term of Seat 15 shall begin at the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s Mid-year Meeting after the 2010 ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting and each ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting every third year after 2010. (Note: In the period prior to the beginning of the regular term of Seat 15, Seat 15 is deemed vacant. Through a process coordinated by the At Large Advisory Committee, the At-Large Community made the selection of a Director to fill the vacant Seat 15 and provided the ICANN (Internet Corporation for Assigned Names and Numbers) Secretary written notice of its selection. The vacant Seat 15 was filled at the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2010, with a term to conclude upon the commencement of the first regular term specified for Seat 15 in accordance with this Section of the Bylaws. Until the conclusion of the ICANN (Internet Corporation for Assigned Names and Numbers) annual meeting in 2010, there was a non-voting Liaison appointed by the At Large Advisory Committee who participated as specified at Sections 9(3) and 9(5) of this Article.)
- h. For the purposes of this Section, the term "Mid-year Meeting" refers to the first ICANN (Internet Corporation for Assigned Names and Numbers) Public Meeting occurring no sooner than six and no later than eight months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual general meeting. In the event that a Mid-year Meeting is scheduled and subsequently cancelled within six months prior to the date of its commencement, the term of any seat scheduled to begin at the conclusion of the Mid-year Meeting shall begin on the date the Mid-year Meeting was previously scheduled to conclude.

In the event that no Public Meeting is scheduled during the time defined for the Mid-year Meeting, the term of any seat set to begin at the conclusion of the Mid-year Meeting shall instead begin on the day six months after the conclusion of ICANN (Internet Corporation for Assigned Names and Numbers)'s annual meeting.

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 two months before the date specified for the commencement of the term as specified in paragraphs 1.d-g above, any 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. Any prior service in Seats 9, 10, 11, 12, 13 and 14 as such terms were defined in the Bylaws as of [insert date before amendment effective], so long as such service was not to fill a vacancy, shall be included in the calculation of consecutive terms under this paragraph.
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;
- b. One appointed by the Root Server System Advisory Committee established by Article XI of these Bylaws;
- c. One appointed by the Security and Stability 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 written notice to the Secretary of ICANN (Internet Corporation for Assigned Names and Numbers) at any time.

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, notice must be provided to that 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 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, 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 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, in which case that vacancy shall be filled by that 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 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, 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 established by Article XI of these Bylaws;
4. A non-voting liaison appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Security and Stability Advisory Committee established by Article XI of these Bylaws;
5. A non-voting liaison appointed by the Governmental Advisory Committee;
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large 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, 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 established by Article IX of these Bylaws;
- b. The Council of the Address 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 (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), 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 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 (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, 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 or 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; (b) the At-Large 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 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.

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.

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-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 (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 and/or 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 comprising 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 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. SPECIFIC ADVISORY COMMITTEES

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.
- b. 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.
- c. 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.
- d. 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.
- e. Each member of the Governmental 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 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 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.
- h. 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 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 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 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 advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental 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 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.

2. Security and Stability Advisory Committee

a. The role of the Security and Stability 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, 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

a. The role of the Root Server System Advisory Committee ("RSSAC") shall be to advise the Board about the operation of the root name servers of the domain name system. The RSSAC shall consider and provide advice on the operational requirements of root name servers, including host hardware capacities, operating systems and name server software versions, network connectivity and physical environment. The RSSAC shall examine and advise on the security aspects of the root name server system. Further, the RSSAC shall review the number, location, and distribution of root name servers considering the total system performance, robustness, and reliability.

b. Membership in the RSSAC shall consist of (i) each operator of an authoritative root name server (as listed at <ftp://ftp.internic.net/domain/named.root>), and (ii) such other persons as are appointed by the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

c. The initial chairman of the DNS (Domain Name System) Root Server System Advisory Committee shall be appointed by the Board; subsequent chairs shall be elected by the members of the DNS (Domain Name System) Root Server System Advisory Committee pursuant to procedures adopted by the members.

d. The Root Server System 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 re-appointment, and shall annually appoint one non-voting liaison to the ICANN (Internet Corporation for Assigned Names and Numbers) Nominating Committee.

4. At-Large Advisory Committee

a. The At-Large 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, 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 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. 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 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 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 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, with the suggestion that the request be transmitted by the Governmental 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, 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 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-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-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-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, 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 Number 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 Number or its 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, any 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 agent 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 reasonable 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 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 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, 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 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 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 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 and the Governmental 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 ("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 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 shall continue in operation according to its existing operating principles and practices, until further action of the committee. The Governmental 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 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 and Stability 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 and Stability 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 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 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

a. There shall exist an Interim At-Large 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 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 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 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 shall become the At-Large 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 by the Nominating Committee shall become members of the At-Large Advisory Committee for the remainder of the terms for which they were selected.

d. Promptly upon its creation, the Interim At-Large 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 ("PDF (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 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 (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, 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 in 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 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 (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, 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 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 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 or Advisory Committee.* An ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organization or an ICANN (Internet Corporation for Assigned Names and Numbers) 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 that 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 Lines 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 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 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 and 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, 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 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 (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, 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 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 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 counterbalance to the executive role, the accountability role needs to be 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 \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#)

Executive role: Root Server System Operators

Accountability role: [RSSAC \(ICANN \(Internet Corporation for Assigned Names and Numbers\)\)](#), ([US DoC-ICANN 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

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

Executive role: Registrant

Accountability role: Registrant, users of lower-level domain names

[Welcome \(/en/about/welcome\)](/en/about/welcome)

[Learning \(/en/about/learning\)](/en/about/learning)

[Participate \(/en/about/participate\)](/en/about/participate)

[Board \(http://www.icann.org/en/groups/board\)](http://www.icann.org/en/groups/board)

[CEO \(http://www.icann.org/en/about/ceo\)](http://www.icann.org/en/about/ceo)

[Staff \(/en/about/staff\)](/en/about/staff)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1\)](https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1)

[Governance \(/en/about/governance\)](/en/about/governance)

[Guidelines \(/en/about/governance/guidelines\)](/en/about/governance/guidelines)

[Articles of Incorporation \(/en/about/governance/articles\)](/en/about/governance/articles)

[Bylaws \(/en/about/governance/bylaws\)](/en/about/governance/bylaws)

[Archive \(/en/about/governance/bylaws/archive\)](/en/about/governance/bylaws/archive)

[Board Documents \(http://www.icann.org/en/groups/board/documents\)](http://www.icann.org/en/groups/board/documents)

[Board Code of Conduct \(http://www.icann.org/en/groups/board/governance/code-of-conduct\)](http://www.icann.org/en/groups/board/governance/code-of-conduct)

[Board Conflicts of Interest Policy \(http://www.icann.org/en/groups/board/governance/coi\)](http://www.icann.org/en/groups/board/governance/coi)

[Board Statements of Interest \(http://www.icann.org/en/groups/board/sois\)](http://www.icann.org/en/groups/board/sois)

[Summary of Conflicts of Interest and Ethics Practices Review \(/en/about/governance/coi/summary-ethics-review-13may13-en\)](/en/about/governance/coi/summary-ethics-review-13may13-en)

[Agreements \(/en/about/agreements\)](/en/about/agreements)

[Accountability & Transparency \(http://www.icann.org/en/news/in-focus/accountability\)](http://www.icann.org/en/news/in-focus/accountability)

[AOC Review \(/en/about/aoc-review\)](/en/about/aoc-review)

[Annual Report \(/en/about/annual-report\)](/en/about/annual-report)

[Financials \(/en/about/financials\)](/en/about/financials)

[Document Disclosure \(/en/about/transparency\)](/en/about/transparency)

[Planning \(/en/about/planning\)](/en/about/planning)

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Planet ICANN (</en/groups/planet-icann>)

RSS Feeds (</en/news/rss>)

- [myICANN \(http://www.my-cann.org/\)](http://www.my-cann.org/)
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- [ccNSO \(http://ccnso.cann.org\)](http://ccnso.cann.org)
- [GAC \(http://gac.cann.org\)](http://gac.cann.org)
- [GNSO \(http://gnso.cann.org\)](http://gnso.cann.org)
- [RSSAC \(/en/groups/rssac\)](/en/groups/rssac)
- [SSAC \(/en/groups/ssac\)](/en/groups/ssac)
- [Community Wiki \(http://community.cann.org\)](http://community.cann.org)
- [Meetings \(http://meetings.cann.org\)](http://meetings.cann.org)
- [New gTLDs \(http://newglds.cann.org\)](http://newglds.cann.org)
- [WHOIS \(http://whois.cann.org\)](http://whois.cann.org)
- Help

(/en/help)
Acronym Helper

Reference Material 4.

**AFFIRMATION OF COMMITMENTS BY THE UNITED STATES
DEPARTMENT OF COMMERCE AND THE INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS**

1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce (“DOC”) and the Internet Corporation for Assigned Names and Numbers (“ICANN”), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet’s domain name and addressing system (DNS)¹, globally by a private sector led organization, the parties agree as follows:

2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet’s success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet’s underlying infrastructure - the DNS - is required to ensure interoperability.

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN’s processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of

¹ For the purposes of this Affirmation the Internet’s domain name and addressing system (DNS) is defined as: domain names; Internet protocol addresses and autonomous system numbers; protocol port and parameter numbers. ICANN coordinates these identifiers at the overall level, consistent with its mission.

new generic top level domain names (gTLDs) or is an expression by DOC of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.

6. DOC also affirms the United States Government's commitment to ongoing participation in ICANN's Governmental Advisory Committee (GAC). DOC recognizes the important role of the GAC with respect to ICANN decision-making and execution of tasks and of the effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the Internet DNS.

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:

9.1 Ensuring accountability, transparency and the interests of global Internet users:

ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board 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) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and

(e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

9.2 Preserving security, stability and resiliency: ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

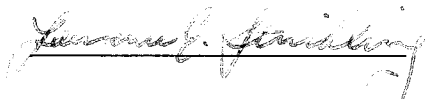
9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine 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. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN will organize a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, as well as experts, and representatives of the global law enforcement community, and global privacy experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

10. To facilitate transparency and openness in ICANN's deliberations and operations, the terms and output of each of the reviews will be published for public comment. Each review team will consider such public comment and amend the review as it deems appropriate before it issues its final report to the Board.

11. The DOC enters into this Affirmation of Commitments pursuant to its authority under 15 U.S.C. 1512 and 47 U.S.C. 902. ICANN commits to this Affirmation according to its Articles of Incorporation and its Bylaws. This agreement will become effective October 1, 2009. The agreement is intended to be long-standing, but may be amended at any time by mutual consent of the parties. Any party may terminate this Affirmation of Commitments by providing 120 days written notice to the other party. This Affirmation contemplates no transfer of funds between the parties. In the event this Affirmation of Commitments is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. All obligations of the DOC under this Affirmation of Commitments are subject to the availability of funds.

FOR THE NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION:



Name: Lawrence E. Strickling
Title: Assistant Secretary for
Communications and Information

Date: September 30, 2009

FOR THE INTERNET CORPORATION
FOR ASSIGNED NAMES AND
NUMBERS:



Name: Rod Beckstrom
Title: President and CEO

Date: September 30, 2009

Reference Material 5.

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.

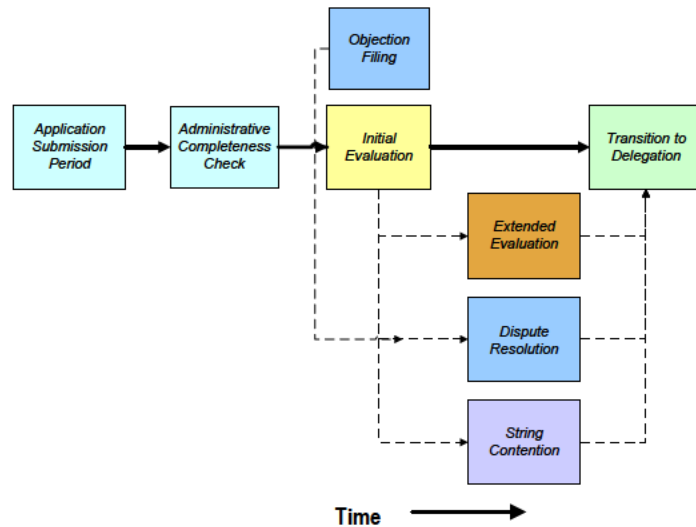


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

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.

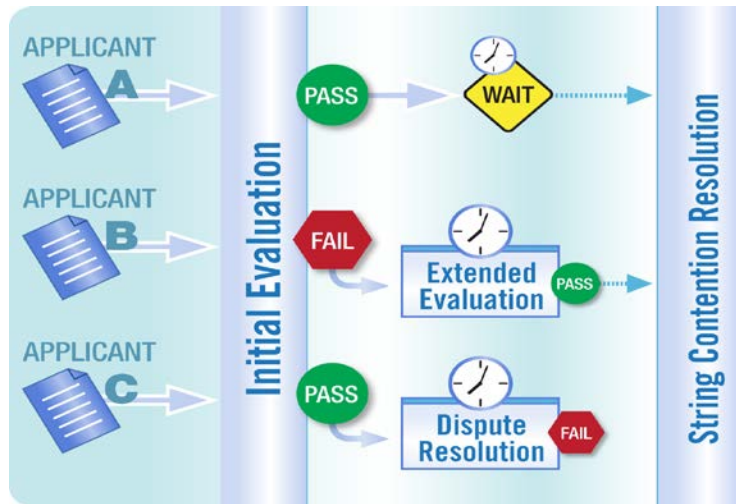


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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:

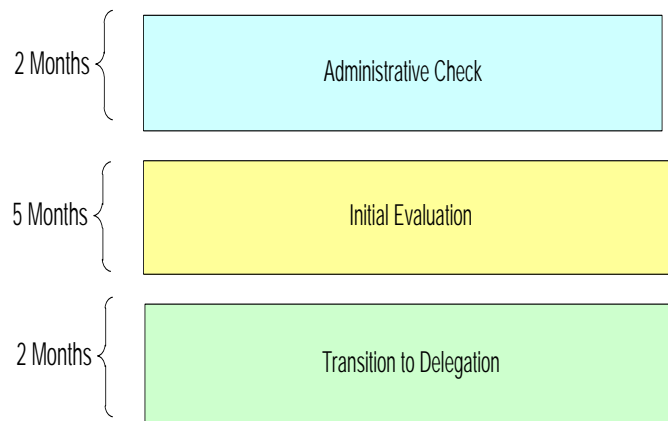


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

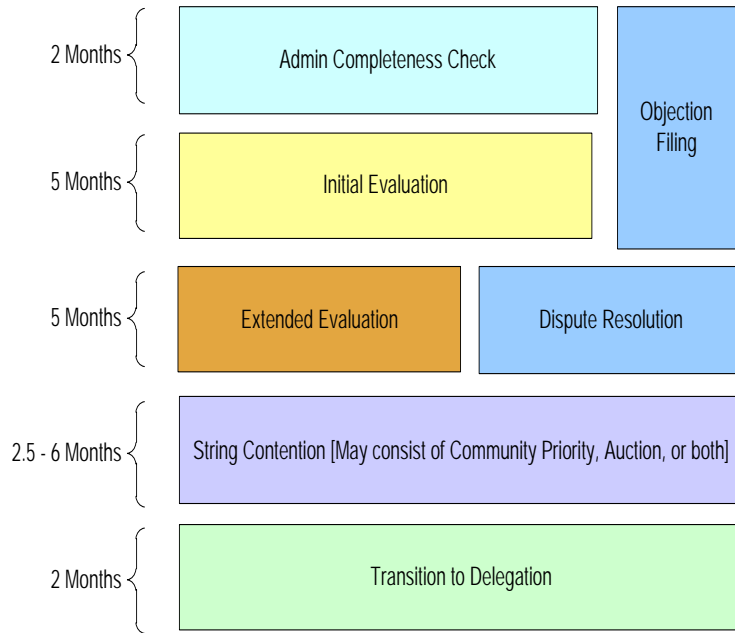


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

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 1988³;
- 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-traffic.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 Borders⁶ 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 Guidelines⁸ 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 fees¹⁰ 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.

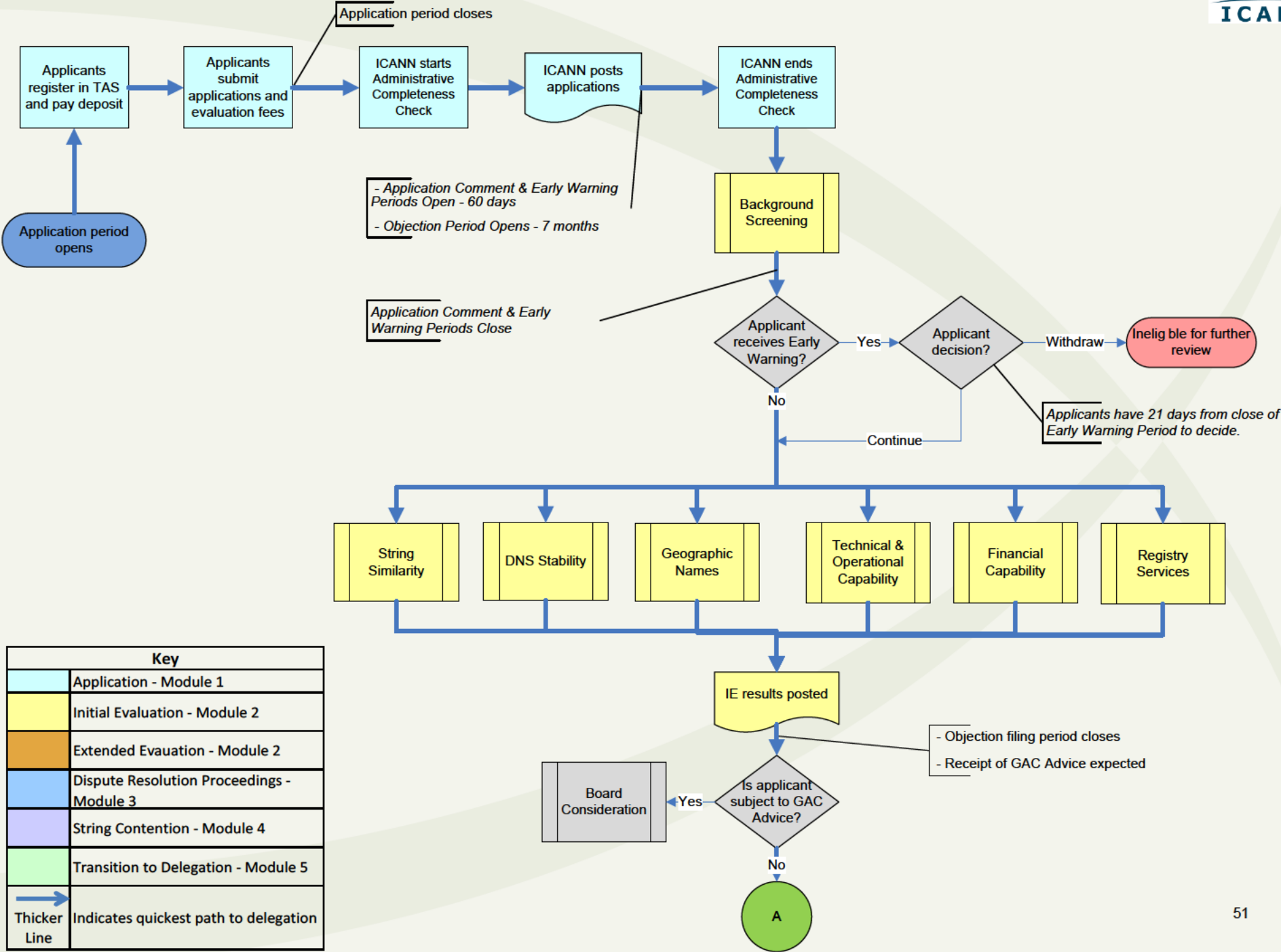
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

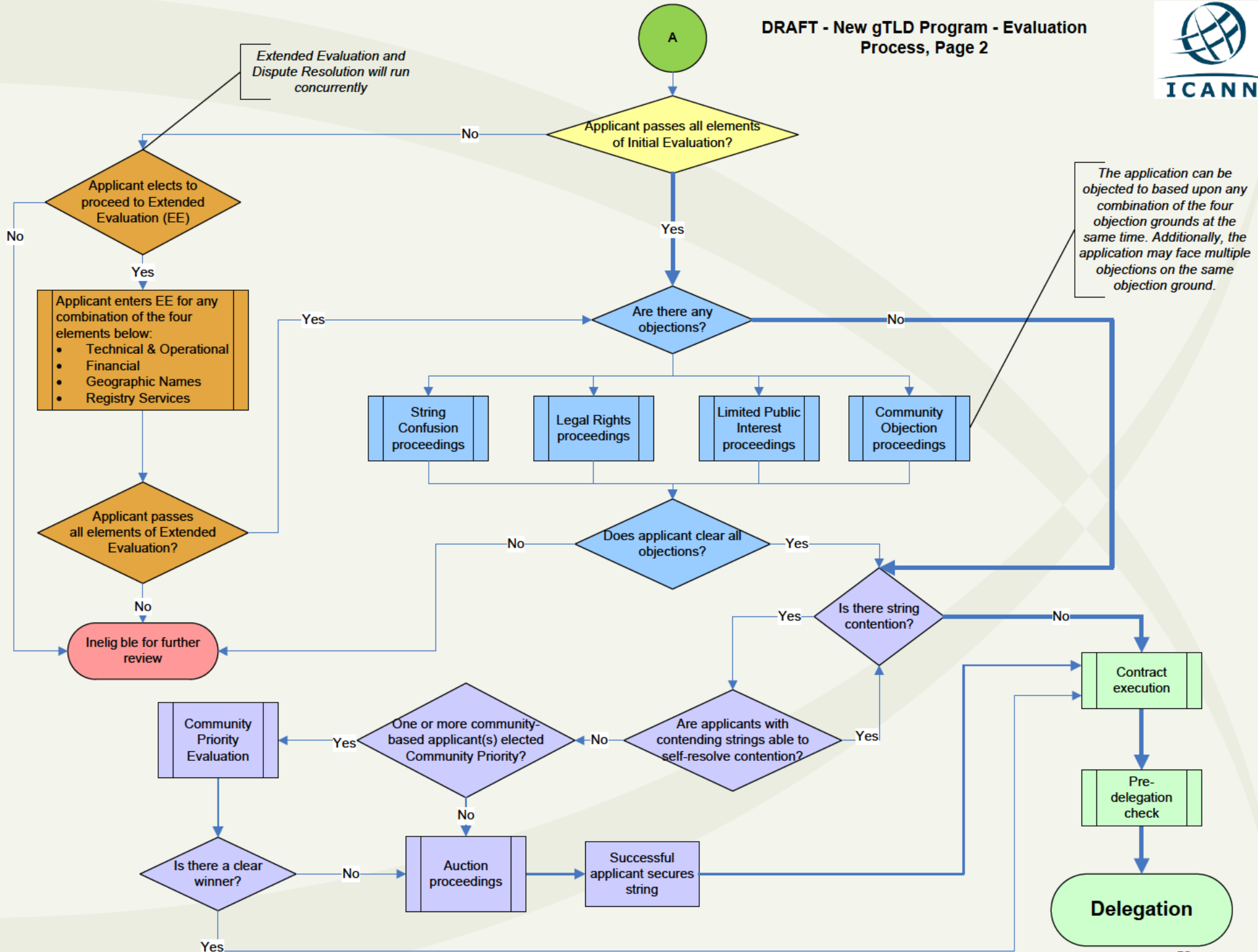
Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

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







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

<i>AFRNIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*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	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	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	رمح ألابي لصل	لاله ارمح ألابي
ءارمحل اقرولبل	الكريستلة 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 (Li, 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/implementation>

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://gns0.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 Names⁶

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 region⁸ 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.

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-balliwick 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



Application is confirmed as complete and ready for evaluation during Administrative Completeness Check

Background Screening
Third-party provider reviews applicant's background.

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

String Similarity
String Similarity Panel reviews applied-for strings to ensure they are not too similar to existing TLDs or Reserved Names.

DNS Stability
All strings reviewed and in extraordinary cases, DNS Stability Panel may perform extended review for possible technical stability issues.

Geographic Names
Geographic Names Panel determines if applied-for string is geographic name requiring government support.

Technical and Operational Capability
Technical and Operational panel reviews applicant's answers to questions and supporting documentation.

Financial Capability
Financial panel reviews applicant's answers to questions and supporting documentation.

Registry Services
Preliminary review of applicant's registry services and referral to RSTEP for further review during Extended Evaluation where necessary

Panel compares all applied-for strings and creates contention sets.

Panel confirms supporting documentation where required.

ICANN will seek to publish contention sets prior to publication of full IE results.

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue **Extended Evaluation**?

Extended Evaluation process

Applicant continues to subsequent steps.

Ineligible for further review

Does applicant pass all elements of Extended Evaluation?

Extended Evaluation can be for any or all of the four elements below:

- Technical and Operational Capability
- Financial Capability
- Geographical Names
- Registry Services

But NOT for String Similarity or DNS Stability

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	Trinidad 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	Rio 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 Índia
		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	<p>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.</p> <p>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.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			

	#	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: <ul style="list-style-type: none"> 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
		<p>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;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>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;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>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);</p> <p>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);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(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	<p>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.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>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.</p>			
		(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+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 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. <p>Submission of IDN tables in a standards-based format is encouraged.</p>	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
				<p>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.</p> <p>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.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> 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
				<p>protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	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	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> 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.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				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	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • 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. 		<p>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.</p> <p>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.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • 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	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • 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	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • relationship to the established name, if any, of the community. 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<ul style="list-style-type: none"> 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	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> 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	<p>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.</p> <p>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.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

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Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>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.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
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	<p>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.</p> <p>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.</p> <p>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</p>			

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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	<p>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.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> 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). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>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.</p> <p>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.</p> <p>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</p>		<p>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.</p>	

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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	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> 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). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> 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	<p>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.</p> <p>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.</p> <p>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.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) a plan for operating a robust and reliable SRS, one of the five critical registry functions;</p> <p>(2) scalability and performance consistent with the overall business approach, and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a well-developed plan to operate a robust and reliable SRS;</p> <p>(3) SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement;</p> <p>(4) SRS is consistent with the technical, operational and financial approach described in the application; and</p> <p>(5) Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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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	<p>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.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>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.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • 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). <p>A complete answer should include, but is not limited to:</p>	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	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(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</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> • 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. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • 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. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(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;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • 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	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>description of personnel roles allocated to this area).</p> <p>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.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>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:</p> <ul style="list-style-type: none"> • 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). <p>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</p>	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	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (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. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (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. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> (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

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>described below.</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ 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. ○ 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 ○ 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 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>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.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • 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	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (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). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (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
		<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>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.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • 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. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>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).</p>	Y	<p>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.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(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;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(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).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(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</p> <p>(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.)</p> <p>1 - meets requirements: Response includes:</p>

	#	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: <ul style="list-style-type: none"> • 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
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> 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	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>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.</p> <p>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.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	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	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>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.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	<p>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:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ▪ 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	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (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. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (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. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (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
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>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.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • 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). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>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.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(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</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>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.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> 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). <p>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.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(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</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(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;</p> <p>(3) Geo-diversity plans are consistent</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		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	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>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.</p> <ul style="list-style-type: none"> 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	<p>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.</p> <p>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.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</p> <p>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</p>	<p>1 - meets requirements: Response includes:</p> <p>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(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;</p> <p>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</p> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • 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). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(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;</p> <p>(3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies & Procedures: provide</p> <ul style="list-style-type: none"> • 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). <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> • 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). <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p>1 – meets requirements: Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 – fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>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.</p> <p>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).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • 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. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • 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. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (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. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (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. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (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. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

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		<p>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.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • 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. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> • 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). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>with the results, and with whom results are shared;</p> <ul style="list-style-type: none"> • 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. <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> • 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). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (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. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (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. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (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,

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							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> 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). <p>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</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; 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 ; An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); Technical plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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	44	<p>OPTIONAL. IDNs:</p> <ul style="list-style-type: none"> 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). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>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.</p> <p>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.</p>	0-1	<p>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.</p>	<p>1 - meets requirements for this optional element: Response includes</p> <ol style="list-style-type: none"> Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element; An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations; Evidence of ability to resolve rendering and known IDN issues or spoofing attacks; IDN plans are consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> 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. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>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</p>	<p>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.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • 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	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>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).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <ol style="list-style-type: none"> (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. <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • 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	<p>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.</p>	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> (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
		<p>executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</p> <p>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.</p> <p>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.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • 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. 	<p>1 - meets requirements:</p> <p>(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);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>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</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>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.</p>	<p>2 - exceeds requirements:</p> <p>Response meets all the attributes for a score of 1 and</p> <p>(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, ;</p> <p>(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</p>

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		<p>operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>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;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>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</p> <p>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:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. <p>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.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(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</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</p> <p>1 - meets requirements:</p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(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;</p> <p>(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</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

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		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> 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. <p>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).</p> <p>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.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>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.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <ol style="list-style-type: none"> Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. <p>1 - meets requirements:</p> <ol style="list-style-type: none"> Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); Response gives consideration to probability and resource impact of contingencies identified; and If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> how on-going technical requirements will be met; and what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p>	N				

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		<p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>					
		<p>(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?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(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.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>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.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with</p>	N	<p>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.</p> <p>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.</p> <p>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</p>	0-3	<p>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.</p>	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements:</p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>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.</p> <p>(4) Registry data escrow deposits</p> <p>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).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>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.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>		<p>to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>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.</p>			
		<p>(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</p>	N	<p>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</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4676 Admiralty 		<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> ▪ 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. <p>(ii) <u>A deposit into an irrevocable cash escrow account held by a reputable financial institution.</u></p> <ul style="list-style-type: none"> • 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 		<p>its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>of five years from the delegation of the TLD.</p> <ul style="list-style-type: none"> • 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**

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
In local currency (unless noted otherwise)					
i) Projected Cash Inflows and Outflows					
A) Forecasted registration volume		-	62 000	81 600	105 180
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310 000	448 800	636 339
D) Other cash inflows		-	35 000	48 000	62 000
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
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):					
i) Hot site maintenance		5 000	7 500	7 500	7 500
ii) Partial Registry Functions		32 000	37 500	41 000	43 000
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
Ia) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs		92 000	195 250	198 930	217 416
B) Total Fixed Operating Costs		107 700	241 750	251 870	275 844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260
Ib) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS		-	5 000	5 500	6 050
B) Provision of Whois		-	6 000	6 600	7 260
C) DNS Resolution for Registered Domain Names		-	7 000	7 700	8 470
D) Registry Data Escrow		-	8 000	8 800	9 680
E) Maintenance of Zone in accordance with DNSSEC		-	9 000	9 900	10 890
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
B) Software		32 000	18 000	24 000	11 000
C) Furniture & Other Equipment		43 000	22 000	14 000	16 000
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		173 000	61 000	54 000	85 000
IV) Projected Assets & Liabilities					
A) Cash		668 300	474 300	413 000	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	579 000	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 Yr - Cur Yr	173 000	234 000	288 000	373 000
J) 3-year Reserve		186 000	186 000	186 000	186 000
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
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
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	-	-	-
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	-	-	-

Comments / Notes
Provide name of local currency used.
Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.
Other cash inflows represent advertising monies expected from display ads on our website.
Costs are further detailed and explained in response to question 47.
Provide a list and associated cost for each outsourced function: Outsourcing hot site to ABC Company - cost based on number of servers hosted and customer support 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
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 Fixed Costs: equals Total Costs less Variable Costs
Check that I) C equals I) N.
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
Commensurate with Question 24 Commensurate with Question 26 Commensurate with Question 35 Commensurate with Question 38 Commensurate with Question 43
-Hardware & Software have a useful life of 3 years -Furniture & other equipment have a useful life of 5 years
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
Should equal amount calculated for Question 50
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.
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.
See below for comments on funding. Revenues are further detailed and explained in response to question 48.

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 registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration 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 anticipated 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 probabilities and our negotiated funding and action plans as shown are adequate to fund our initial start-up costs.

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Live / Operational			
			Year 1	Year 2	Year 3	
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					
B)	Capital expenditures					
C)	Change in Non Cash Current Assets	n/a				
D)	Change in Total Current Liabilities					
E)	Debt Adjustments	n/a				
F)	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						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
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						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) 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-part-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	Rightholders
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 name¹:

- 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 interest³ 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.

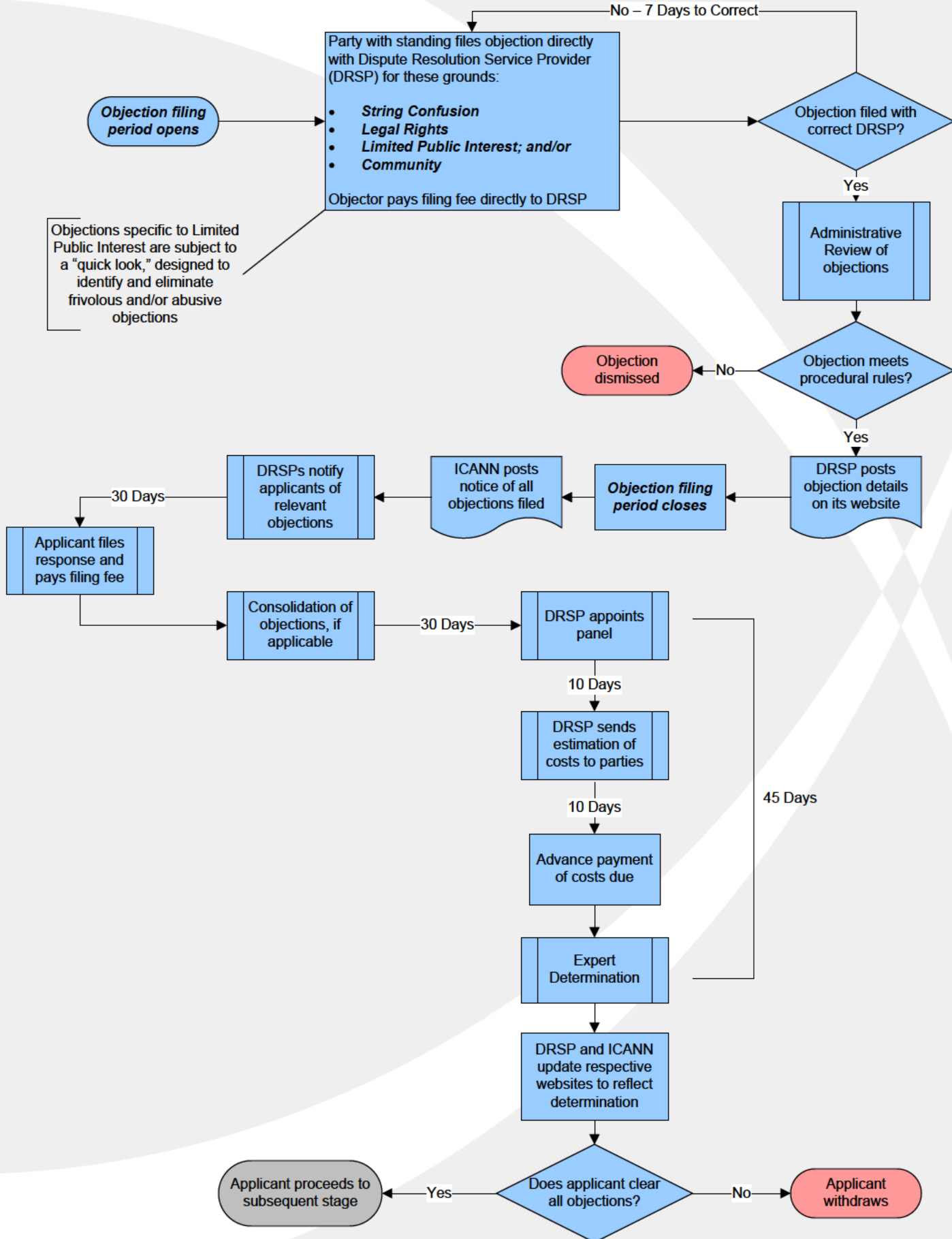
Factors that could be used by a panel in making this determination include but are not limited to:

- 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.

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; (iii) 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.

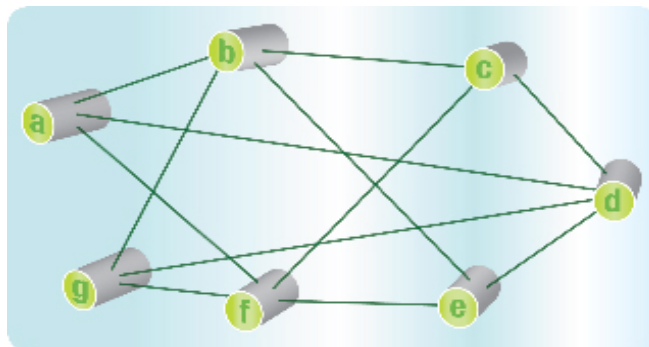


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

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.

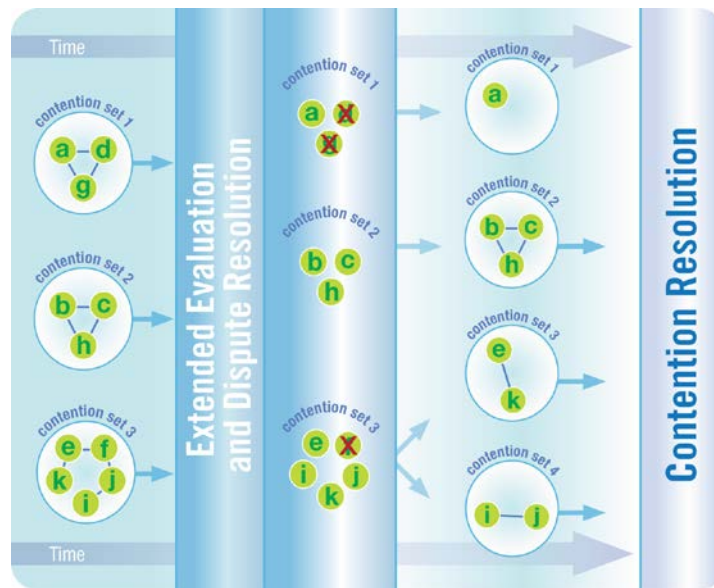


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

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.

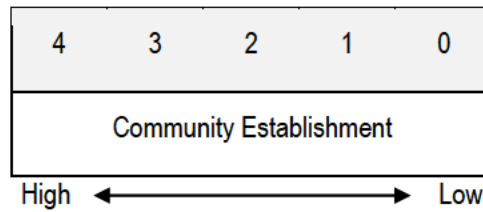
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

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

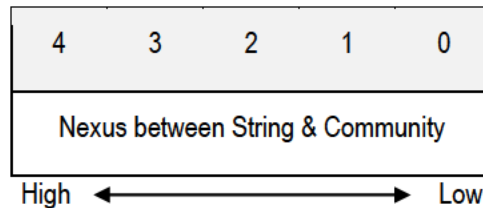
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international 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:



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.

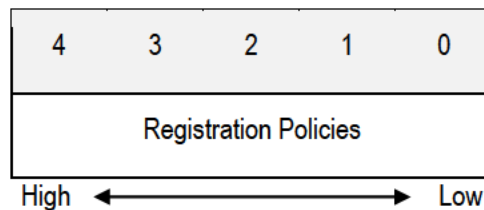
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"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)

4	3	2	1	0
Community Endorsement				
High		←————→		Low

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.

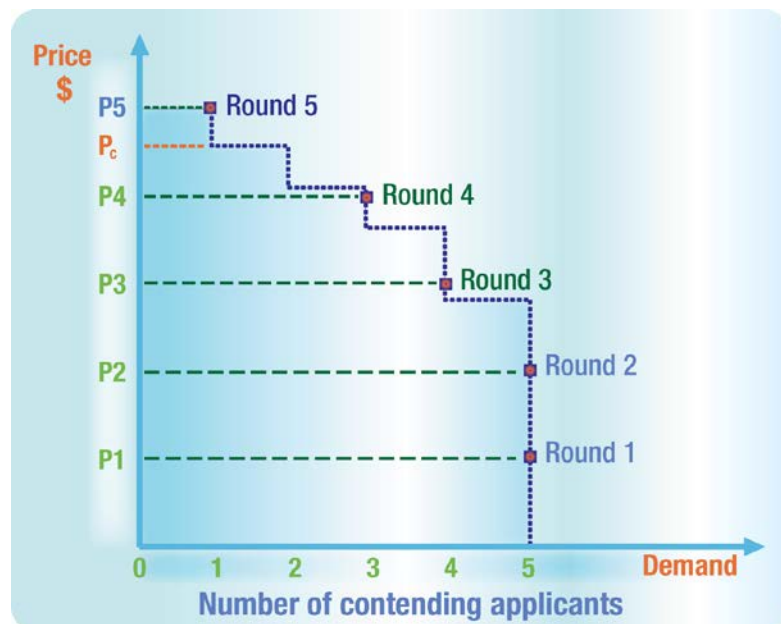


Figure 4-4 – Example of an auction for five mutually-contending applications.

- 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.

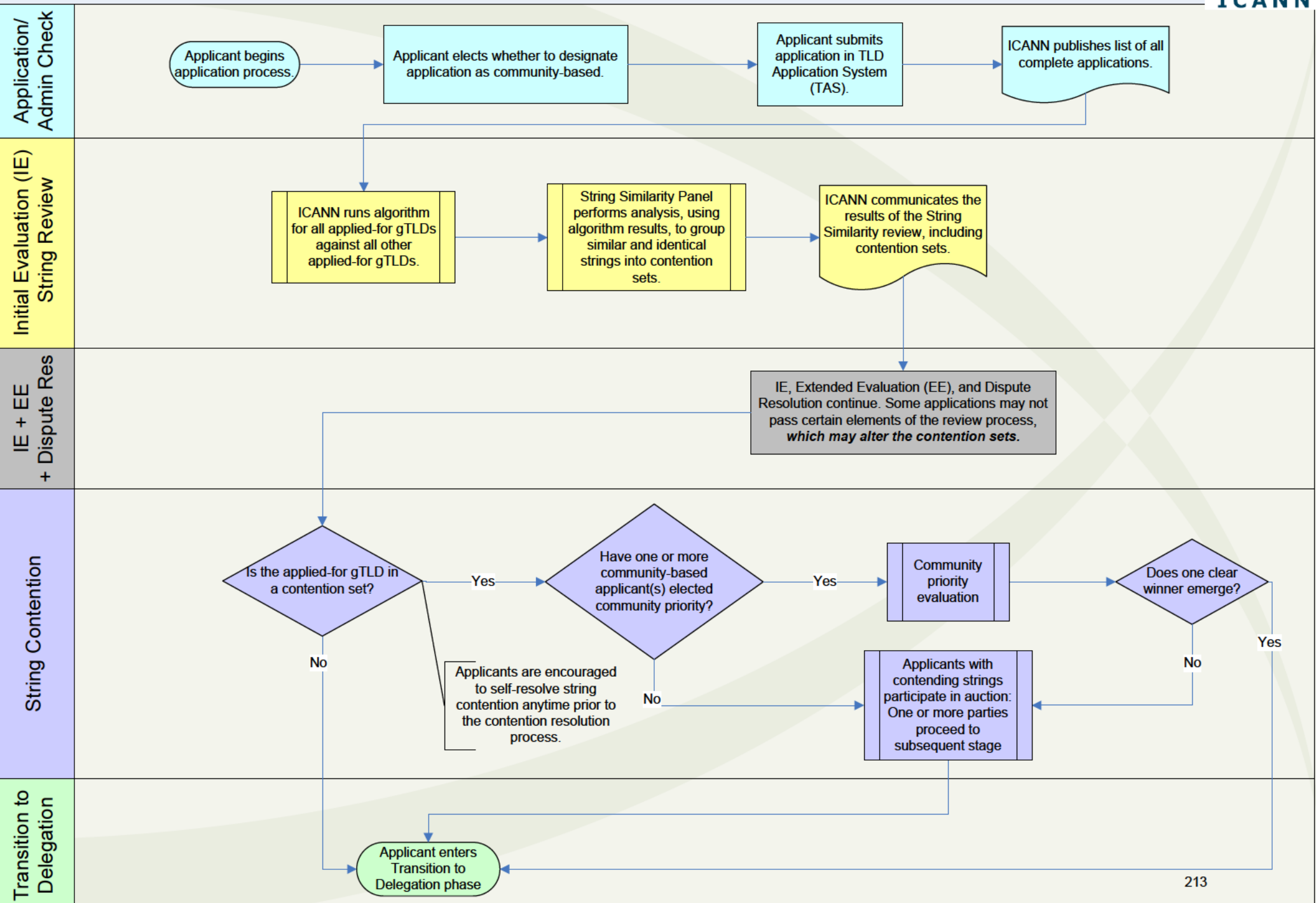
² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting 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





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 1591¹:

“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 IR² (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://gns0.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.

Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

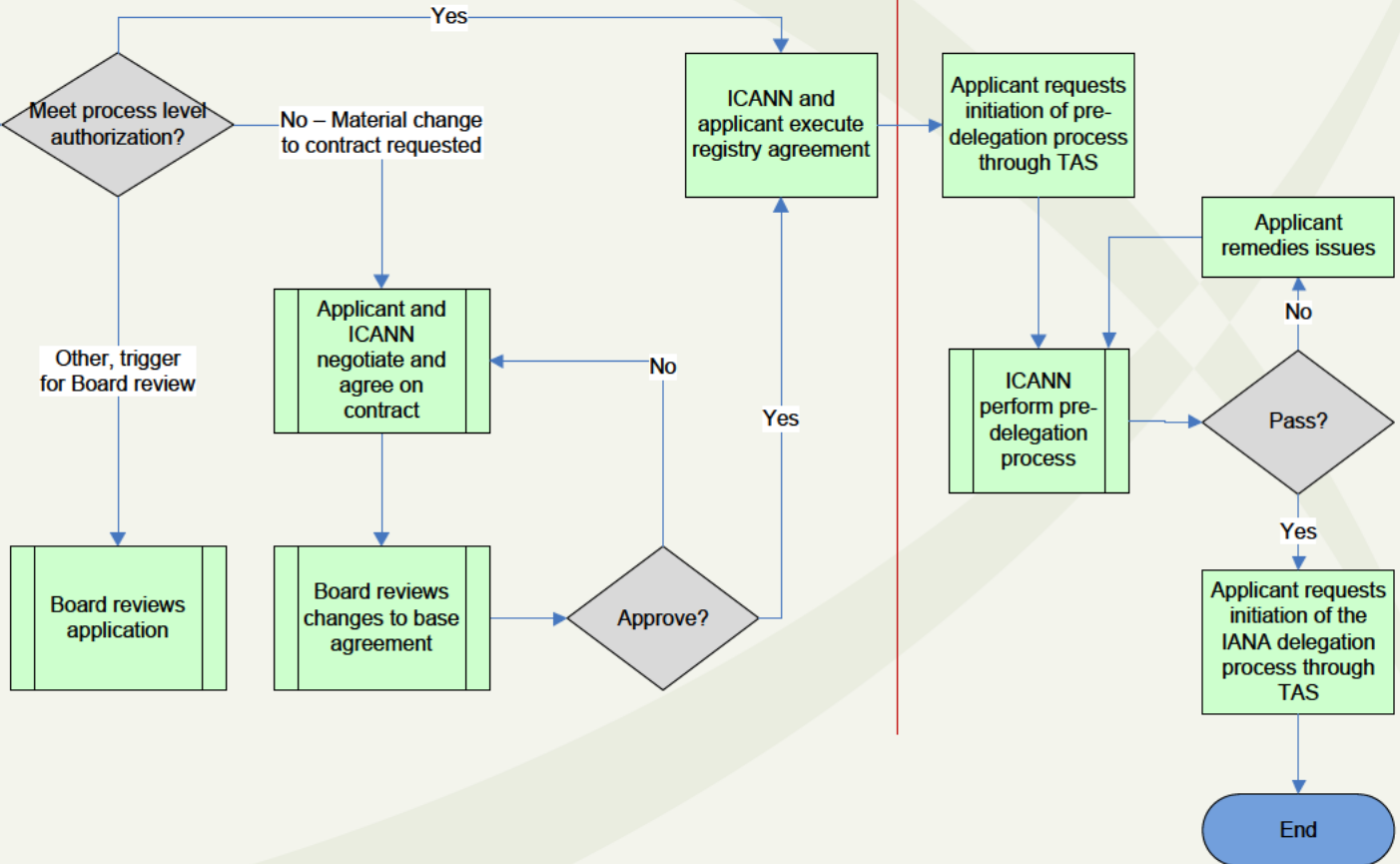
Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months

ICANN provides notice of eligibility to applicant

Applicant prepares documentation for contracting

- Includes:
- Material changes in circumstances
 - Continued Operations instrument
 - Designated contracting parties



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 Policies 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.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

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.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(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:

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(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.

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(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

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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

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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

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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

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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

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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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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:

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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 Policies 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 inquiries 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 (6th) 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 **SLRs** 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 of 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 as 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 to 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) its 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-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.
- 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 its 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 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.

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 its 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 so 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 RDRP 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 FORA 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.

Reference Material 6.

Internet Corporation for Assigned Names and Numbers

NEWS & PRESS (/EN/NEWS) › ANNOUNCEMENTS (/EN/NEWS/ANNOUNCEMENTS)

Public Comment Forum for Terms of Reference for New gTLDs

6 December 2005

Updated 22 December 2005

The ICANN (Internet Corporation for Assigned Names and Numbers) bylaws require a public comment period of 20 days following the initiation of a gNSO Policy-Development Process (PDP (Policy Development Process)). <<http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#AnnexA>> (<http://www.icann.org/general/archive-bylaws/bylaws-08apr05.htm#AnnexA>)

ICANN (Internet Corporation for Assigned Names and Numbers) has opened a Public Comment Forum for the below Terms of Reference for New gTLDs . The "Issues Report" for this PDP (Policy Development Process) is available at <<http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>> (<http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>).

The public comment period is from 6 December 2005 to 31 January 2005. Comments may be submitted to the email address <new-gtlds-pdp-comments@icann.org> (<mailto:new-gtlds-pdp-comments@icann.org>).

Comments submitted may be viewed at <<http://forum.icann.org/lists/new-gtlds-pdp-comments>> (<http://forum.icann.org/lists/new-gtlds-pdp-comments>)

gNSO Home Page (<http://gnso.icann.org>)

Call for comments on gNSO web site (<http://gnso.icann.org/comments-request>)

Terms of reference for new gTLDs

1. Should new generic top level domain names be introduced?

- a. Given the information provided here and any other relevant information available to the GNSO (Generic Names Supporting Organization), the GNSO (Generic Names Supporting Organization) should assess whether there is sufficient support within the Internet community to enable the introduction of new top level domains. If this is the case the following additional terms of reference are applicable.

2. Selection Criteria for New Top Level Domains

- a. Taking into account the existing selection criteria from previous top level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN (Internet Corporation for Assigned Names and Numbers)'s goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top level domains can meet demands for broader use of the Internet in developing countries.
- b. Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- c. Examine whether additional criteria need to be developed which address ICANN (Internet Corporation for Assigned Names and Numbers)'s goals of ensuring the security and stability of the Internet.

3. Allocation Methods for New Top Level Domains

- a. Using the experience gained in previous rounds, develop allocation methods for selecting new top level domain names.

- b. Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- c. Examine how allocation methods could be used to achieve ICANN (Internet Corporation for Assigned Names and Numbers)'s goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.

4. Policy to Guide Contractual Conditions for New Top Level Domains

- a. Using the experience of previous rounds of top level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- b. Determine what policies are necessary to provide security and stability of registry services.
- c. Determine appropriate policies to guide a contractual compliance programme for registry services.

Announcements (</en/news/announcements>)

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New gTLDs (<http://newgtlds.icann.org>)

WHOIS (<http://whois.icann.org>)

Help

([/en/help](/help))

Acronym Helper

Reference Material 7.



GNSO Issues Report

Introduction of New Top-Level Domains

GNSO ISSUES REPORT.....1

INTRODUCTION OF NEW TOP-LEVEL DOMAINS.....1

[Summary.....3](#)

B. Objective.....4

[3. Background.....5](#)

[4. Whether to introduce new top-level domains.....9](#)

[A. Summary of Previous Selection Criteria.....15](#)

[B. Selection Criteria 2000 Generic and Sponsored Top-Level Domain Process.....19](#)

[5. Selection Criteria 2004 Sponsored Top-Level Domain Process.....23](#)

[6. Selection Criteria .ORG Contract Reassignment.....27](#)

[7. Selection Criteria .NET Reassignment.....32](#)

[8. Contractual Conditions.....38](#)

[9. Allocation Methods.....45](#)

[10. Relevance.....51](#)

[C. Staff Recommendation.....51](#)

[D. Proposed Working Group Terms of Reference.....52](#)



Policy Development 2

New Top-Level Domains

Reference List.....59



Summary

1. As requested by the GNSO Council at its 22 September 2005 teleconference (<http://gnso.icann.org/meetings/minutes-gnso-22sep05.shtml>), this document sets out past decisions on the policy for implementing new top-level domains, provides relevant references and sets out other considerations in four issue areas. These issue areas are whether to introduce new gTLDs, selection criteria, allocation methods and contractual conditions.
2. It is recommended that the GNSO launch a focused policy development process, in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO (on internationalized domain names). The report proposes draft Terms of Reference for this work.



B. Objective

1. This report is designed to give the GNSO Council the information necessary to make a decision about whether to proceed with a policy development process on a new top-level domain strategy. It should be read in conjunction with the Background Report on Internationalized Domain Names which is being prepared for a separate process to be undertaken in conjunction with the ccNSO.
2. The GNSO Guidelines for Issues Reports have been used to frame this document. In particular, the Issues Report describes the key issues, provides directly relevant background and links; recommends whether to proceed with the policy development process and proposes Terms of Reference for a GNSO Working Group.



3. Background

1. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if this determination is affirmative, developing robust policy to enable the selection and allocation of new top-level domains.
2. Following discussions at the ICANN meeting in Luxemburg on the strategy for introduction of new gTLDs, ICANN staff and the GNSO Council have cooperated to compile decisions and documents relating to the introduction of new top-level domain names. The compilation covers main documents and decisions since 2000. The latest version is available at <http://gnso.icann.org/issues/new-gtlds/new-tlds-31aug05.htm>. This compilation has been the subject of discussions on the GNSO Council mailing list and the source for an analysis in table format available at:
<http://www.gnso.icann.org/mailing-lists/archives/council/msg01249.html>.
3. On 1 September 2005 a process proposal was presented at the GNSO Council meeting. At this meeting, the Council recalled the



New Top-Level Domains
Whether to introduce new TLDs

original Names Council recommendation of 18-19 April 2000, which stated:

“The Names Council determines that the report of Working Group C and related comments indicate that there exists a consensus for the introduction of new gTLDs in a measured and responsible manner. The Names Council therefore recommends to the ICANN Board that it establish a policy for the introduction of new gTLDs in a measured and responsible manner, giving due regard in the implementation of that policy to:

(a) promoting orderly registration of names during the initial phases;

(b) minimizing the use of gTLDs to carry out infringements of intellectual property rights;

and (c) recognizing the need for ensuring user confidence in the technical operation of the new TLD and the DNS as a whole.

Because there is no recent experience in introducing new gTLDs, we recommend to the Board that a limited number of new top-level domains be introduced initially and that the future introduction of additional top-level domains be done only after careful evaluation of the initial introduction.”

4. The view of the Council was that ICANN should complete the evaluation of the introduction of a limited number of new top-level domains, as described in the report from the New TLD Evaluation Process Planning Task Force. The report (<http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>) described four aspects to evaluate (technical, business, legal, and process). Part of the evaluation dealing with Policy and Legal issues



New Top-Level Domains
Whether to introduce new TLDs

was completed in July 2004 (<http://icann.org/tlds/new-gtld-eval-31aug04.pdf>). Further experience is also available as additional sponsored top-level domains are introduced in 2005 (for example, .travel, .mobi, and .jobs). The Council considered that the evaluation work could proceed in parallel with development of a comprehensive new gTLD policy, with the expectation that the evaluation would be complete before any final policy recommendations were presented to the Board for approval.

5. At a conference call on 22 September 2005 (<http://gns0.icann.org/meetings/agenda-gns0-22sep05.htm>) the Council resolved to request ICANN Staff to produce an Issues Report. On the basis of the Issues Report, a decision would be made to conduct a policy development process on the introduction of new top-level domain names. The issues report should cover the following core issues: whether to continue to introduce new gTLDs; the criteria for approving applications for new gTLDs; the allocation method for choosing new gTLDs and the contractual conditions for new gTLDs.
6. The GNSO Council determined that the Issues Report would cover all four issue areas, with a presumption of an affirmative answer to



New Top-Level Domains
Whether to introduce new TLDs

the first issue area; the question whether to introduce new TLDs.

This document is prepared in response to this request, with four parts corresponding to the issues listed above. The rules for Issues Reports also require that ICANN Staff provide confirmation of the relevance of the work to the GNSO and to the ICANN community. Finally, in compliance with the Issues Report Guidelines, ICANN Staff are required to provide draft Working Group Terms of Reference. These are found at the end of this document.

7. The GNSO Council made a simultaneous request for ICANN Staff to provide a separate background document featuring existing documents and decisions associated with the introduction of internationalized domain names at the top-level. This work would be considered in view of a policy development process to be conducted jointly by the GNSO and ccNSO.
8. In addition to the compilation of ICANN documents mentioned above, reference material is available in studies and reports by other entities such as the OECD, WIPO, the National Research Council and Summit Strategies International which can be found in the Reference List at the end of the document.



4. Whether to introduce new top-level domains

9. The work of the DNSO (later to evolve into GNSO and ccNSO) preceding the two-step “proof of concept” introduction of gTLDs produced a policy supporting the introduction of new gTLDs in a measured and responsible manner. Although this was a policy established for a temporary purpose, there is implicit recognition that additional gTLDs would be introduced, subject to evaluation of initial introductions. The evaluation has been made, but not completely, and a conclusion needs to be firmly drawn as to whether new TLDs shall continue to be introduced.
10. As stated above, the GNSO Council has determined that finalizing the evaluation is not seen as a prerequisite for starting working on the other elements of the GNSO Council resolution of 22 September 2005. Accordingly, work can proceed in parallel on these two fronts. Constituencies and other members of the ICANN community will be invited to review the submissions that they made to the original new gTLD policy development process in 1999 and 2000 and thereafter, and consider whether the limited introduction of new gTLDs has changed their views in any significant way.



New Top-Level Domains
Whether to introduce new TLDs

11. A short recapitulation of the emergence of top-level domains is provided in the following sections. Prior to ICANN's establishment, Dr. Jon Postel introduced the first generic top-level domains, implying a semantic structuring of the DNS with .COM intended for business users, .ORG for non-profit organizations, .NET intended for network users etc. During the early and mid-1990s, as country code TLDs were being delegated, the root zone was expanding by 10-20 TLDs or more per year for nearly a decade. From 1994 to 1996, 40 or more TLDs were added each year.
12. ICANN was established in November 1998. At the time, the .COM, .NET and .ORG gTLDs were commonly available for registration, while .INT, .EDU, .MIL and .GOV were available for registration by specific communities only. In addition, approximately 246 country code top-level domains were available for countries and territories to enable registrations of local domain names. A full list of all current TLDs, maintained by IANA, can be found at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.
13. Since 1998 the industry has gone through an unprecedented development. The Internet is available across the globe and the number of users is approaching 1 billion. Internet access and use is



New Top-Level Domains
Whether to introduce new TLDs

now seen as mission critical for many users. ICANN itself has also changed substantially with an increase in the complexity and volume of its work and adaptation of its staffing, organization and working methods.

14. With respect to gTLDs, there are at present nine additional top-level domains. The registry agreements can all be found at <http://www.icann.ORG/registries/agreements.htm> and a full listing of all the registries can be found at <http://www.icann.ORG/registries/listing.html>. A further set of gTLDs will be added as new sponsored top-level domain agreements are signed during the course of 2005.
15. The market for domain names shows continued signs of growth. Domain name market data can be found in a variety of sources, for example in VeriSign's latest report, found at: <http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>.
16. An article in DNJournal.com, at <http://dnjournal.com/columns/50million.htm>, foresees that if the 30% growth rate experienced in the year 2005 continues, the number of gTLD domain name registrations would double to 100 million in less



New Top-Level Domains
Whether to introduce new TLDs

than 3 years. Usage patterns are developing and studies from both the OECD and the NRC show that proven demand for new top-level domains is inconclusive, with contentions about advantages claimed by some in stark contrast to the drawbacks purported by others. The NRC report elaborates at some length on the advantages and drawbacks. The NRC Report also states that, from a security and stability perspective, the introduction of “tens” of new TLDs per year could be done without risks. The report calls for predictability in the introduction of new top-level domains by publishing time schedules as well as applying measures to follow-up and stop the process if need be.

CONSIDERATIONS

17. The decision whether to introduce new top-level domains is informed by reviewing previous constituency statements (see the full list of reports in the Reference List); examining external studies and reports and taking account of developments in Internet use and the domain name registration industry. Some additional considerations are outlined below.



New Top-Level Domains
Whether to introduce new TLDs

18. Introduction of new gTLDs remains a matter of controversy in the Internet community. Additional TLDs are requested by many that see a business opportunity in running a new TLD. Whether there is true market demand for new TLDs from end-users is another matter and is likely to be conditional on multiple factors. There are also negative aspects associated with the introduction of new gTLDs such as the risk of marketplace confusion and additional costs for trade mark protection for intellectual property right holders.
19. While there seems to be a reasonable consensus within the Internet community that a measured introduction of additional TLDs can be undertaken with negligible risks for the security and stability of the Internet, assessments of suitable addition rates do vary. It should be noted in this context that the processes associated with TLD management/administration may set stricter limits than plain security/stability/technical considerations regarding how many TLDs can be added within a given time frame or how many can be maintained after their creation.
20. Additional information can be found in IETF documents, inter alia from [RFC 3071](#) , which provides a different typology of domain



New Top-Level Domains
Whether to introduce new TLDs

names and domain use, and from [RFC 3467](#), which elaborates on the uses of the domain name system.

21. Regardless of the chosen approach, the possibility of measuring the success or failure of the approach should be considered.

Accordingly, there is a need to foresee methods to evaluate, correct and possibly halt the process as appropriate.



A. Summary of Previous Selection Criteria

22. The following sections describe selection criteria which have been used in four previous ICANN TLD assignment processes. They provide a baseline for selection criteria to be applied in future allocations of new TLDs. Further work needs to be done to identify areas where modified or new criteria could be developed. Whilst some similarities exist across each of the four examples, the sections below illustrate the differences in each of the processes. In the interim, analysis of the evaluation of each of the four processes has been left out.

23. Previous GNSO work concluded that TLD strings should be proposed by the applicants and not prescribed by ICANN. However, there is also a need to develop policy that may place possible limits on strings that can be used at the top-level. Further discussion is required about establishing vetting processes which are objective and robust.

24. The selection criteria fit within the categories outlined below and are discussed in detail in the following sections:



25. Technical: The requirement to maintain the Internet's security and stability has been paramount. Through each successive round, the technical criteria have become more stringent and detailed. The technical criteria are designed to ensure that the registry meets all of ICANN's stability and security obligations, enables effective resolution of all domain names and reflects best practice technical developments. These criteria have evolved significantly over the last several years to now include requirements to conduct registry services with strong expectations of data and equipment security; the use of the latest software and hardware; the best technical personnel and ongoing commitment to technical improvements that reflect ICANN's requirements to run a stable and secure Internet architecture.

26. Financial and Business: The provision of detailed financial and business plans feature as critical selection criteria which have become more exacting and subject to, for example, international accounting standards, through each subsequent round. The criteria range across the provision of evidence that the applicant is financially viable over the long term; revenue and pricing models that demonstrate detailed understanding of the domain name



registration business; evidence of sufficient qualified staffing;
customer service commitments in languages other than English on
a 24/7/365 basis; innovative service offerings and the willingness to
contribute to ICANN's budget objectives.

27. Legal and Regulatory: These criteria are difficult to analyze as each round had different objectives. The criteria revolve around commitments to ICANN's policy development process; to ICANN's consensus based decision making; to compliance with California-based contractual arrangements; and to public notification of terms and conditions of contracts. However, enhancement of competition in domain name registration services at the registry and registrar level, enhancing the diversity and utility of the domain name system and strengthening policy development procedures have also been key themes.

28. Community Expectations: ICANN's diverse community has very differing expectations but some central themes have emerged. Public comment periods on both selection criteria and evaluation methods are expected. ICANN processes have included deliberate periods of public comment during which the Internet community is able to comment on applicants and their application data. In



addition, applicants are able to ask questions and receive answers about the process which are posted on the ICANN's website. The public comment archives provide useful examples of the kinds of questions that were raised during the comment period. These comments were taken into account by the evaluators, particularly in the sTLD process and the .NET process. See, for example, <http://www.icann.org/org/tlds/net-rfp/net-rfp-public-comments.htm>.

29. Application Processes: The application process has become more stringent and robust with a shift to on-line application processes and full cost recovery fees for applicants. In addition, specific probity arrangements that prevent applicants influencing ICANN Board and Staff members have been established. There are also requirements for willingness to enter negotiations on the basis of draft contracts that set out standard terms and conditions and for availability to conduct follow-up evaluation negotiations.

30. External factors: The common element in the analysis of external factors is that whatever action ICANN takes to expand or modify the domain name space, there is sure to be intense interest from all areas of the Internet community in addition to the Government Advisory Committee and other ICANN entities.



B. Selection Criteria 2000 Generic and Sponsored Top-Level Domain Process

31. On 16 July 2000 the ICANN Board voted on a resolution (<http://www.icann.ORG/tlds/new-tld-resolutions-16jul00.htm#00.460>) to enable the introduction of a limited number of sponsored and unsponsored top-level domains.
32. The 2000 round of new TLDs applications resulted in the introduction of .biz, .info, .name and .pro as unsponsored top-level names and .aero, .museum and .coop as sponsored top-level domains. The formal documentation can be found at <http://www.icann.ORG/yokohama/new-tld-topic.htm> .
33. Instructions for applicants and early discussion about the initial selection criteria can be found at <http://www.icann.ORG/tlds/new-tld-application-instructions-15aug00.htm>. Forty five applications were received in the process. The key criteria in this initial round included the areas set out below.
34. Technical: These criteria can be found at <http://www.icann.ORG/tlds/application-process-03aug00.htm#1e>



and included a technical capabilities plan including “the following topics ...physical plants, hardware, software, facility and data security, bandwidth/Internet connectivity, system outage prevention, system restoration capabilities and procedures, information systems security, load capacity, scalability, data escrow and backup capabilities and procedures, Whois service, zone file editing procedures, technical and other support, billing and collection, management and employees, staff size/expansion capability, and provisions for preserving stability in the event of registry failure.

Required supporting documentation included: company references, diagrams of systems (including security) at each location, personnel resumes and references”.

35. Financial and Business: These criteria were contained in sections relating to the provision of business plans and required “detailed, verified business and financial information about the proposed registry”; company information, current and past business operations, registry/Internet related experience and activities, mission, target market, expected costs/expected budget, expected demand, capitalization, insurance, revenue model, marketing plan, use of registrars and other marketing channels, management and



employees, staff size/expansion capability, long-term commitment/registry failure provisions.

36. Legal and Regulatory: These criteria revolved around the treatment of (then) existing gTLD policies and proposals how new TLDs would be treated. There were no explicit requirements to commit to ICANN's policy development processes. However, explicit plans were expected to address name registration policies and the explanation of why applicants could argue that their application was unique and responded to unmet demand.

37. Community Expectations: There was a lot of discussion within the community about what top-level domains ought to be chosen, the history of which can be found at <http://www.icann.org.org/announcements/icann-pr16nov00.htm>.

38. Application Processes: The application process required the payment of a USD 50,000 non-refundable fee. The application materials differentiated between sponsored and unsponsored applications; required a "fitness disclosure", application for specific dispensation to hold material confidential and hard copies of application material delivered to ICANN's offices. There was a



publicly posted question and answer period and a public comment period.

39. External factors: At the time of the 2000 round, the Internet boom was at its height. There was a lot of industry interest in the potential to expand the domain name space which is evidenced by the number of applications ICANN received and the robust discussion which took place about the selection of seven new TLDs.



5. Selection Criteria 2004 Sponsored Top-Level Domain Process

40. The second process is the sponsored top-level domain round held in 2004 which, so far, has enabled the introduction of .mobi, .travel, .cat and .jobs. Other applications are still under consideration and include .post, .xxx, .tel (pulver), .tel and .asia.

41. The selection criteria for the 2004 sTLD round were posted on ICANN's website and, for the first time, an electronic website based application process was used to collect applicant information. ICANN provided a set of explanatory notes; set out what applicants needed to do to comply with the application process; provided a forum for answering questions about the application process and posted a timeline for applicants to follow.

42. One of the key characteristics in this process was the criteria for establishing a sponsoring community and organisation that would be responsible for domain name registration policies applicable for the top-level domain.



43. Technical: The minimum technical criteria were contained in Part E of the application material. Applicants were required to demonstrate their technical competence by showing how they would, for example, conduct registry operations; what kind of registrar-registry protocols would be required; how zone files would be managed; what facilities would be provided; how data escrow would be handled; what technical support would be available and how data and systems recovery would be managed.

44. Financial and Business: These criteria were contained in Part C and D of the application material which required detailed business plans and financial models. The business plan required appropriate staff to be identified; a marketing plan, plans for registrar management and appropriate fee structures. Most importantly, applicants were required to show why their application was unique and innovative; added community value to the domain name space, enhanced the diversity of the Internet and enriched global communities. In addition, applicants were expected to show how their operations would protect the rights of others through compliance with dispute resolution mechanisms and compliant registration systems.



45. Legal and Regulatory: A key element of the sponsored top-level domain application process was the requirement that applicants adequately define and demonstrate the support of a sponsored TLD community with evidence from a supporting organisation. The applicants were required to demonstrate that the proposed sponsoring organisation was appropriate for the purpose, would participate in ICANN's policy development processes and had support from the broader community.

46. Community Expectations: In this RFP, there were specific efforts made to diversify the domain name space; to demonstrate the attractiveness of different kinds of domain name spaces and to have different policy making processes that would be the responsibility of the sponsoring organisations. The public comments submitted for the sTLD process can be found at <http://forum.icann.ORG/lists/stld-rfp-general>.

47. Application Processes: Part F of the application material contained an Application Checklist to assist applicants in ensuring that their application materials complied with all sections of the RFP.



48. External factors: There were a number of special factors which arose throughout the application process including the status of regional geographic specific sTLDs; the treatment of identical string applications and the influence of the GAC principles of national governments with respect to public policy questions relating to some applications. The sTLD process is ongoing.



6. Selection Criteria .ORG Contract Reassignment

49. The reassignment of the .ORG contract took place during 2002 with the final agreement between Public Internet Registry and ICANN being signed on 3 December 2002. PIR commenced operation on 1 January 2003. There is a wide range of material available on the ICANN website including the selection criteria, application material, staff evaluations and public comments on the process. These are found at <http://www.icann.org.org/tlds/org/rfp-20may02.htm>.
50. The final contract can be found at <http://www.icann.org.org/tlds/agreements/org/>. (Note that the contract is a very large file with numerous appendices.)
51. The key selection criteria for the .ORG contract were contained in an on-line “proposal form” which applicants were required to fill out and submit in hard copy. Ten applications were received by ICANN in a competitive tender process.
52. The selection criteria <http://www.icann.org.org/tlds/org/criteria.htm> on the .ORG reassignment focus on the “need to preserve a stable,



well functioning .ORG registry”, “ability to comply with ICANN’s policies”, “enhancement of competition for registration services”, “differentiation of the .ORG TLD”, “inclusion of mechanisms for promoting the registry’s operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community”, “level of support for the proposal from .ORG registrants”, “the type, quality, and cost of the registry services proposed”, “ability and commitment to support, function in, and adapt protocol changes in the shared registry system”, “transition considerations”, “ability to meet and commitment to comply with the qualification and use requirements of the VeriSign endowment and proposed use of the endowment” and “the completeness of the proposals submitted and the extent to which they demonstrate realistic plans and sound analysis”. These criteria are consistent with, in particular, those applied in the .NET reassignment. The following sections set out the specifics of the selection criteria.

53. Technical: The RFP made specific reference to the size and complexity of the .ORG registry. In 2002 there were 2,700,000 domain names in the .ORG registry. The RFP asked specifically for applications from companies that already offered registry services



and who could demonstrate the capacity to run a “domain-name registry of significant scale”. The Technical Plan included specific information about transition planning. Other technical requirements were an explanation of registry-registrar models; database capabilities; data escrow and backup; physical facilities; publicly accessible WHOIS; technical support and compliance with technical specifications in RFCs.

54. Financial and Business: The .ORG selection criteria focused specifically on the following key areas: equivalent access for registrars, enhancement of competition, differentiation of the .ORG TLD (also relevant in the “community expectations” section) and supporting documentation (setting out the applicant’s business information, annual reports, business references and community support).

55. Legal and Regulatory: The .ORG RFP required applicants to comply with a draft agreement which was posted during the RFP process, available at <http://www.icann.ORG/announcements/announcement-24oct02.htm>. In addition, applicants were expected to agree to



requirements to comply with ICANN's published policies and to participate actively in new policy development initiatives.

56. Community Expectations: Responsiveness to the non-commercial Internet user community was a key selection criterion in the .ORG reassignment. Management of the USD 5 million .ORG endowment and provision of indications of community support also fit into this category.

57. Application Processes: The .ORG applicants were required to pay a fee of USD 35,000 in addition to the cost of preparing the application form. Eleven applications were received. The applicants used the application question period and public comments about the applications were received through the ICANN website. A "fitness disclosure" was also required in addition to a formal statement identifying materials that would remain confidential. The general information about applicants and the statement of information about applicants refers specifically to the emphasis placed on the applicants' ability to operate a large registry including identifying any outsourcing arrangements.



58. External factors: Key external factors were the management of the VeriSign endowment, the transition of a very large existing database and support for the non-profit sector: The process for effecting changes to the .ORG registry services agreement can be found at <http://www.icann.org.org/announcements/announcement-22apr02.htm>.



7. Selection Criteria .NET Reassignment

59. The fourth example of a process with strict selection criteria was the reassignment of the .NET contract. The .NET registry had approximately six million registered domain names. The GNSO had recommended a distinction between absolute and relative criteria. The absolute criteria were developed with the broader ICANN community to “ensure that the .NET top-level Domain is administered at a very high level of safety, security, efficiency and fairness.” Each applicant had to satisfy all the absolute criteria. Comparisons were then made on the basis of the relative criteria and how well each applicant responded to those criteria.
60. There were five applicants for the .NET contract – VeriSign, NeuStar (as Sentan Registry Services), Afilias, DENIC and CORE. VeriSign was determined to be the successor operator after a comprehensive evaluation process.
61. The current version of the contract can be found at <http://www.icann.org/org/tlds/agreements/net/net-registry-agreement-01jul05.pdf> . A public comment period ran until 10 October 2005 on proposed amendments to the .NET contract.



Reference to the public comment period can be found at

<http://www.icann.org.org/announcements/announcement-22sep05.htm>.

62. In the RFP, there was a strong focus on absolute technical criteria, similar to those applied in the .ORG reassignment.

63. Technical: These criteria were absolute and included requirements for explicit descriptions (and substantiation) of existing registry operations; a “burdens and benefits” analysis of registry plans and all technical components of planned registry services. In addition, applicants were expected to provide detailed information on name server functional specifications; patch, update and upgrade policies; performance specifications; service level agreements, WHOIS specifications and data escrow arrangements. Explicit compliance with a range of RFCs was also required in addition to the provision of information about technical capabilities; sourcing of expert staff and highly detailed technical plans for ongoing operation in addition to detailed technical migration plans.

64. Security and stability of operations was a critical element of the absolute selection criteria. This included technical and business



failure contingency plans in addition to robust transition and migration plans.

65. Financial and Business: These criteria ranged across the provision of information about directors, officers, key staff and number of employees; the kind of organization and its core business. In addition, applicants were expected to provide pricing plans and demonstrate financial strength and long term viability. A detailed business plan was required, including staffing plans, expense models and cash availability.

66. Legal and Regulatory: These criteria included commitments to ICANN's existing consensus policies and compliance with all future consensus policies; a focus on increasing the competitive supply of registry services and innovative registry services

67. Community Expectations: ICANN processes include deliberate periods of public comment during which the Internet community can state their views. The .NET process outcome was contested and the public comment archives can be found at

<http://www.icann.ORG/tlds/net-rfp/net-rfp-public-comments.htm>.



68. Application Processes: The application process for the .NET contract required payment of a USD 200,000 application fee (with a graduated refund payable depending on the number of applicants). Each unsuccessful applicant received a USD 150,000 refund. There were procedures for non-compliant proposals and a requirement that portions of the application material be made public (and then commented upon by members of the ICANN community). Probity and conflict of interest measures were put in place to prevent applicants from attempting to influence ICANN Board and Staff members.

CONSIDERATIONS

69. Doubts have been expressed about whether it is necessary for ICANN to qualify new gTLDs on the basis of support and sponsorship by a community; the provision of business and financial plans and addition of new value to the name space. The NRC report suggests pre-qualification of applicants on technical capability, basic financial viability, and adherence to registrant protection standards and compliance to ICANN policies.



70. As stated earlier, the presumption is that it should be left to the imagination of potential bidders to propose strings for new gTLDs. From that perspective, an essential aspect to analyze is what character strings are acceptable and under what conditions. This relates to elements such as string length, technical, linguistic, cultural or even political aspects. There is a case for investigating whether there are any external authoritative sources that could be useful for vetting purposes, where both negative and positive list approaches can be considered.
71. The GAC has stated clear views on how to consider certain strings for TLDs, inter alia in a letter to ICANN dated 3 April 2005 (<http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.htm>)
72. There are examples of negative list approaches concerning domain names on the second level, which may be of relevance also for TLD strings. Reserved names lists are also mentioned in the chapter on contractual conditions. A recent addition on this topic is [the reserved names list](#) for .EU that is now published, covering country names of EU Member States in a plurality of languages.



73. The selection criteria previously used can be assessed for future selection processes from both an overall perspective and from a detailed perspective on each criterion. It is clear that ICANN should strive for process simplicity, especially since simplicity is an integral element of ensuring predictability in its processes.



8. Contractual Conditions

74. This section sets out analysis of the key contractual conditions relating to the initial 2000 round of new TLDs, the conditions for the new sTLDs and the contractual arrangements for the .ORG and .NET reassignment processes. The analysis is not intended to be comprehensive across each of the sets of agreements but rather to identify key points and areas where the agreements have evolved.
75. As noted above in the Selection Criteria section, contractual conditions have evolved to reflect the growing maturity of ICANN's organisation and the changing commercial environment in which registries operate. A list of all gTLDs can be found at <http://www.icann.ORG/registries/listing.htm> . All contracts between ICANN and gTLD operators and sponsors can be found at <http://www.icann.ORG/registries/agreements.htm>.
76. The change in approach for the 2005 TLD agreements was designed to streamline the agreement structure and to allow additional flexibility. Basic provisions have been reduced to key points; repetitious items have been removed and appendices have been simplified or eliminated altogether.



77. Other changes from the 2001 generic and sponsored top-level domain agreements include those set out in the following sections.
78. Obligations of Parties: The provisions have been simplified to eliminate clauses that repeated ICANN's mission as set out in the Bylaws. In addition, clauses relating to limitations around certain business practices by registry operators have been eliminated where they are overly prescriptive. Registry operator's obligations have been reduced to those covenants that are of fundamental interest to ICANN.
79. Consensus Policies: The old agreements provided a framework for the development of "consensus policies" including topics on which policies applicable to the registry operator may be developed. Since the original agreements were drafted in 2001, ICANN's restructuring and industry changes have had a significant effect on the way in which ICANN's policy development processes have been codified through the Bylaws. In the new form agreement, the reference to "consensus policies" includes all existing policies as of the date of the agreement, and all policies later developed through the policy development process, as part of ICANN's Bylaws. Some scoping of the development of policies under the agreement is included in the



2005 agreements. However, the Bylaws are intended to be the authoritative guide on the due process and procedure for the development of consensus policies.

80. Zone File Access: The updated registry agreements continue to obligate registry operators to provide zone file access to ICANN and to provide a free copy of the zone file to requesting parties.

81. Reserved Names: The identification of reserved top-level domain strings is simplified in two ways. One, a list on the IANA website that is updated from time to time and two, a list of names reserved from registration consistent with the relevant appendix which would be updated as needed.

82. Registry-Registrar Relationships: The existing framework of agreements for registry operators requires them to do business with (and only with) all ICANN-accredited registrars as well as mandating “equal access” to registry services and resources. The new .NET registry agreement continues this practice. The new .NET agreement prohibits registries from acting as registrars. However, registries may provide for volume discounts, marketing support and other incentive programs provided that the same



opportunity to qualify for those discounts and programs is available to all registrars.

83. Data Escrow: The 2001 registry agreement required data escrow (zone file copy) by the registry operator. In addition, the 2001 agreement also specified by appendix both the specifications for the data escrow and the form of data escrow agreement. The new .NET agreement also has this requirement.

84. WHOIS Policy: WHOIS policies (including consideration of public WHOIS, requirements for independent providers and ICANN's specifications) remained unchanged in the .NET agreement.

85. Functional and Performance Specifications: The functional and performance specifications were set out in Appendix C to the 2001 TLD agreements. The 2005 agreements set forth the specifications in Appendix 7.

86. Notice and Process for Proposed Registry Services & Product Changes: ICANN's pre-2005 registry agreements did not describe a procedure for ICANN to follow in considering registry requests to introduce new services or otherwise modify the registry agreement. A GNSO policy development process was launched in 2003 to



assist ICANN with developing such a procedure. The work of that GNSO PDP has been incorporated into all recent ICANN registry agreements

87. Dispute Resolution: The provisions governing dispute resolution contain mandatory arbitration provisions and also impose requirements that parties engage in co-operative discussions before proceeding to any arbitration demand. It is important to note that the intention of amending these provisions is to resolve any disputes through early informal processes (although these are mandated procedures). The new .NET provisions also contain specific performance provisions which give options to remedy non-performance through measures other than contract termination.

88. Termination Provisions: ICANN's termination rights revolve around an understanding of uncured and fundamental and material breaches of enumerated provisions relating to registry operator performance including those conditions relating to preserving security and stability; complying with consensus policies; handling of registry data; compliance with the process for approval of new registry services or material changes to existing services; and payment of ICANN fees.



89. Fees and Pricing: These conditions relate to fixed registry fees, transaction based fees and variable fees (essentially pass through of registrar fees when not collected from registrars directly).
90. Term of Agreement and Renewal: These conditions specify the time period for the gTLD assignment and conditions for renewal of the agreement.

CONSIDERATIONS

91. With the current contractual conditions as a starting point, there is a need to select essential contract conditions on which policy decisions are possible. In addition, there is an opportunity to identify policy aspects on new suggestions for contractual provisions.
92. ICANN is moving towards simplification of the registry contracts and standardized contracts could also be considered. Such aspects are especially appropriate to consider if a large number of new top-level domain names are to be added to the root level. A detailed proposal to simplify current agreements has been introduced during a public comment period. When reviewing the contractual conditions, past and current policy debates on TLD use could be



considered. An example would be the discussions about to what extent sponsored TLD registries should be able to set and change policies for domain name registration.

93. Currently, the contractual conditions feature cancellation of the contract as the principal sanction available. This “nuclear option” is clearly only applicable in extreme cases of non-compliance and has never been used. Some recent registry contracts, however, feature arbitration with other sanction possibilities for the compliance regime and such approaches could be considered further.

94. Suggestions put forward in the WIPO report to safeguard the interests of IPR holders are relevant to domain name registration rules.

95. IETF findings and proposals provide input for reviewing certain contractual conditions. Examples are the technical best practices for TLD zones that the DNSOP working group has elaborated and the results from the CRISP working group relating to WHOIS.



9. Allocation Methods

96. There are technical, processing and maintenance limits on the number of new gTLDs that could be introduced within a given time frame. The number of applications that meet stipulated selection criteria may exceed these limits, calling for an allocation method to handle such situations. Accordingly, policy choices about allocation methods need to be made. The policy choices should consider that combinations of such options are possible and could be related to different purposes. [check on RFC reference to numbers of TLDs that can be added]
97. There is a number of allocation methods to choose from and these methods can be grouped into the following categories; sequential or first-come/first-served, random selections in the form of ballots or lotteries, auction models (with increasing or decreasing bidding) and comparative evaluations, commonly known as “beauty contests”.
98. To date, ICANN has only used comparative evaluation methods. These evaluation procedures have differed in the details, by applying different criteria as explained in the selection criteria



chapter above. Evaluations have been performed in different ways; in-house, with mixed teams or by external consultants.

99. In the 2000 “proof-of-concept” round, ICANN used a comparative hearing process conducted by ICANN Staff and Board to select 7 out of the 44 applicants on the respective merits of their cases in fulfilling the specified selection criteria.

100. In the 2004 round for sponsored gTLDs, ICANN issued an open invitation for any applicants to propose new sponsored top-level domains. This time, ICANN engaged a project manager, selected by competitive bidding and assisted by three review panels, to determine whether the selection criteria were fulfilled or not. Allocation of a TLD to an applicant was to be conditional only upon fulfillment of these criteria. This process was designed to have an objective evaluation by experts insulated from lobbying by applicants, who were prohibited from contacting the evaluator. The intention was further to avoid lobbying pressure on ICANN Staff and Board as well as to minimize the risk for potential criticism about subjectivity in the process.



101. The .ORG reassignment was conducted in 2002 as a competitive tender process based on an open RFP with the selection criteria as specified in the previous chapter. Eleven applications were received and the evaluation was performed using a multi-team approach. The evaluation tasks were distributed by topic between consultants, constituencies and ICANN staff (as described in an evaluation report at: <http://www.icann.org/tlds/org/preliminary-evaluation-report-19aug02.htm>). PIR was selected as the proposed new registry for this gTLD and the ICANN Board resolved in accordance with this proposal.

102. The .NET reassignment was conducted in 2004-2005 as a competitive tender process based on an open RFP with the selection criteria specified in the previous chapter. Five bids were received and the evaluation was conducted by an outside consultant, assigned to this task through competitive bidding and selection by ICANN Staff and Board. The final evaluation and recommendation by the consultant is available at: <http://www.icann.org/announcements/announcement-28mar05.htm>.

CONSIDERATIONS



103. It should be recognized that the final decision to allocate a gTLD lies with the ICANN Board, where contractual arrangements are taken into account for the final approval. This implies that judgments can sometimes become complex, especially when an application attracts intense community and media interest. The .NET reassignment is a case in point, where the Board followed the consultant's recommendation to reappoint VeriSign as registry for .NET. However, community concerns were raised about the contractual conditions which, in response to those concerns, have been renegotiated, posted for public comment and presented to the Board.

104. ICANN has considerable experience in comparative evaluation methods. Two other allocation methods mentioned initially, first-come/first-served and random selection, are self-explanatory. ICANN has no experience of either model or of using auctions. Information about auction methods can be found in a variety of publications a selection of which are found in the Reference List.

105. The choice of allocation method has significance only if the number of valid applications is higher than the number of available slots for new TLDs. With criteria defined for a successful



application, it could be considered reasonable to accept them on a first-come/first-served as long as they meet the criteria, provided that the number of such applications is lower than, or equal to, the number of available slots for new TLDs. However, experience with “land rush” effects in domain name registrations show that first-come/first-served does not work when many valid applications are supplied at the same time. With this in mind, it is prudent to foresee the need for another allocation method from the outset.

106. The NRC report states that “If new gTLDs are to be created, the currently employed comparative hearing or expert evaluation processes should not be assumed to be the only processes for selecting their operators” and suggests that if the number of qualified applicants turns out to be less than the number of available slots, all would be chosen; if not, a market-based selection process, i.e. an auction, could be used to select among the applicants. The report further contends that “because of the wide range of intents and corresponding designs of such processes, they must be carefully designed, drawing on the wide range of previous experience in the design of auctions”.



107. In the process of determining the preferred allocation method, ICANN is constrained by some legal requirements that may limit the options for choosing allocation methods. Such limitations need to be investigated in parallel as soon as preferred allocation methods start to emerge in the selection process.



10.Relevance

108. Issues surrounding the creation of new top-level domains and the policies for undertaking that work are directly relevant to the GNSO's mission and the ICANN Bylaws. It is anticipated that very close consultation will take place between other parts of ICANN's organisation including the ccNSO, the Government Advisory Committee and expert technical working groups.

109. This work will have a lasting value and applicability and will establish a framework for future decision making. The work will also have an impact on existing policies for registry services.

C. Staff Recommendation

110. It is recommended that the GNSO launch a focused policy development process on the issues outlined in the 22 September 2005 resolution in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO on (internationalized domain names).



D. Proposed Working Group Terms of Reference

111. The draft Working Group Terms of Reference reflects very diverse objectives across the ICANN community. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if that is affirmative, developing robust policy to enable the selection and allocation of new top-level domains. The proposed Terms of Reference found below could be used as a guide for further work.

112. Term of Reference One: Should new top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

113. Term of Reference Two: Selection Criteria for New top-level Domains



New Top-Level Domains
Staff Recommendations & Proposed Terms of Reference

- (a) Using the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- (c) Examine whether distinctions between restricted, unrestricted, sponsored and unsponsored top-level domains are necessary and how the choice of distinctions meets the interests of relevant stakeholders.
- (d) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.



- (e) Examine whether additional criteria can be developed to normalize and simplify the administrative process of selecting and implementing new top-level domains.

114. Term of Reference Three: Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds of top-level domain name application processes, develop modified or new criteria which simplify and standardize the allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots and comparative evaluation processes to determine the most predictable and stable method of implementing additions to the Internet root.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



115. Term of Reference Four: Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop modified or new contractual criteria which are publicly available prior to any application rounds.
- (b) Examine whether additional contractual conditions are necessary to improve ICANN's contractual compliance regime to provide predictability and security of registry services.
- (c) Examine whether a registry services code of conduct, in addition to contractual conditions, would improve a compliance regime which is easily understandable and recognizes differences in approaches to offering registry services whilst, at the same time, ensuring the stability and security of the Internet.

116. At the Council meeting on 28 November 2005, it was resolved to adopt Terms of Reference as follows:



New Top-Level Domains
Staff Recommendations & Proposed Terms of Reference

117. Should new generic top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

118. Selection Criteria for New Top-Level Domains

- (a) Taking into account the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage



New Top-Level Domains
Staff Recommendations & Proposed Terms of Reference

new and innovative ways of addressing the needs of Internet users.

- (c) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.

119. Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



120. Policy to Guide Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- (b) Determine what policies are necessary to provide security and stability of registry services.
- (c) Determine appropriate policies to guide a contractual compliance programme for registry services.



Reference List

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Johnson, David and Susan Crawford, *Old Delusions and new TLDs*, comments submitted 13 November 2002 as part of ICANN Amsterdam meeting topic (<http://www.icann.org/amsterdam/gtld-action-plan-topic.htm>). On line version available at <http://forum.icann.org/gtld-plan-comments/general/msg00003.html>.

Johnson, David and Susan Crawford, *A Concrete "Thin Contract Proposal"*, submitted 23 August 2003 as comments on new TLD contracts. On line version including proposed draft contract available at <http://forum.icann.org/mtg-cmts/stld-rfp-comments/general/msg00039.html>.

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National Research Council, *Signposts in Cyberspace: The Domain Name System and Internet Navigation*, Committee on Internet Navigation and the Domain Name System: Technical Alternatives and Policy Implications; Washington, DC: 2005. ISBN: 0-309-09640-5. Executive summary found at http://www.nap.edu/execsumm_pdf/11258.pdf).



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Organisation for Economic Cooperation and Development, *Generic Top-Level Domain Names: Market Development and Allocation Issues*. Working Party on Telecommunications and Information Services Policies. Paris: 2004.

DSTI/ICCP/TISP(2004)/2Final. On line version at
<http://www.oecd.org/dataoecd/56/34/32996948.pdf>.

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<http://www.icann.org/presentations/sapiro-forum-rome-04mar04.pdf>.

VeriSign, *The Domain Name Industry Brief*, Volume 2, Issue 2, May 2005. On line version at
<http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>

World Intellectual Property Organisation, *New Generic Top-Level Domains: Intellectual Property Considerations*, WIPO Arbitration and Mediation Center, 2004. On line version at <http://arbiter.wipo.int/domains/reports/newgtld-ip/index.html>.

ICANN Links

GNSO gTLDs Committee Final Report on New gTLDs, May- June 2003

9 May, v4: <http://www.dnso.org/dnso/notes/20030509.gTLDs-committee-conclusions-v4.html>
21 May, v5: <http://www.dnso.org/dnso/notes/20030521.gTLDs-committee-conclusions-v5.html>
02 Jun, v6: <http://www.dnso.org/dnso/notes/20030602.gTLDs-committee-conclusions-v6.html>
12 Jun, v7: <http://www.dnso.org/dnso/notes/20030612.gTLDs-committee-conclusions-v7-1.html>

IANA alphabetical listing of all TLD domains - <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.

List of Registry Agreements <http://www.icann.ORG/registries/agreements.htm>



List of Registries

<http://www.icann.ORG/registries/listing.html>.

Reference Material 8.

Internet Corporation for Assigned Names and Numbers

[GROUPS \(/EN/GROUPS\)](#) › [BOARD \(/EN/GROUPS/BOARD\)](#) › [DOCUMENTS \(/EN/GROUPS/BOARD/DOCUMENTS\)](#)

Adopted Board Resolutions | Paris

26 June 2008

- Approval of Minutes
- [GNSO \(Generic Names Supporting Organization\) Recommendations on New gTLDs](#)
- [IDNC \(Internationalized Domain Name\) / IDN Fast-track](#)
- [GNSO \(Generic Names Supporting Organization\) 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 \(DNS Security Extensions\)](#) in .ORG
- [ICANN \(Internet Corporation for Assigned Names and Numbers\) 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 \(Internet Corporation for Assigned Names and Numbers\) Structures](#)
- Board Committee Assignment Revisions
- Approval of BGC Recommendations on [GNSO \(Generic Names Supporting Organization\) Improvements](#)
- Receipt of Report of President's Strategy Committee Consultation
- Selection of Mexico City for March 2009 [ICANN \(Internet Corporation for Assigned Names and Numbers\) Meeting](#)
- Review of Paris Meeting Structure
- Board Response to Discussions Arising from Paris Meeting
- [ICANN \(Internet Corporation for Assigned Names and Numbers\) 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

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 \(/minutes/prelim-report-29may08.htm\)>](http://www.icann.org/minutes/prelim-report-29may08.htm (/minutes/prelim-report-29may08.htm))>

[| back to top |](#)

[GNSO \(Generic Names Supporting Organization\) Recommendations on New gTLDs](#)

Whereas, the [GNSO \(Generic Names Supporting Organization\)](#) initiated a policy development process on the introduction of New gTLDs in December 2005. <[http://gns0.icann.org/issues/new-gtlds/ \(http://gns0.icann.org/issues/new-gtlds/\)>](http://gns0.icann.org/issues/new-gtlds/ (http://gns0.icann.org/issues/new-gtlds/)>)

Whereas, the [GNSO \(Generic Names Supporting Organization\) 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 \(Generic Names Supporting Organization\)](#) 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> (<http://gnso.icann.org/meetings/minutes-gnso-06sep07.shtml>)>

Whereas, the Board instructed staff to review the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) cross-functional teams have developed implementation details in support of the GNSO (Generic Names Supporting Organization)'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> (<http://icann.org/topics/new-gtld-program.htm>)>

Whereas, consultation with the DNS (Domain Name System) 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> ([/topics/dns-stability-draft-paper-06feb08.pdf](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 (Internet Corporation for Assigned Names and Numbers)'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 (Generic Names Supporting Organization) policy recommendations for the introduction of new gTLDs <<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> (<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 (generic Top Level Domain) introduction process is launched.

| back to top |

IDNC (Internationalized Domain Name) / IDN Fast-track

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board recognizes that the "IDNC (Internationalized Domain Name) 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 (International Organization for Standardization) 3166-1 two-letter codes while an overall, long-term IDN ccTLD (Country Code Top Level Domain) policy is under development by the ccNSO (Country Code Names Supporting Organization).

Whereas, the IDNC (Internationalized Domain Name) 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 (Domain Name System);
- Comply with the IDNA protocols;
- Take input and advice from the technical community with respect to the implementation of IDNs (Internationalized Domain Names); and
- Build on and maintain the current practices for the delegation of ccTLDs, which include the current IANA (Internet Assigned Numbers Authority) practices.

Whereas, the IDNC (Internationalized Domain Name) Working Group's high-level recommendations require implementation planning.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) is looking closely at interaction with the final IDN ccTLD (Country Code Top Level Domain) PDP (Policy Development Process) 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 (International Organization for Standardization) 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 (Internationalized Domain Name) WG (Working Group) for completing their chartered tasks in a timely manner.

Resolved (2008.06.26.05), the Board directs staff to: (1) post the IDNC (Internationalized Domain Name) WG (Working Group) 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 (Internet Corporation for Assigned Names and Numbers) Cairo meeting in November 2008.

| [back to top](#) |

GNSO (Generic Names Supporting Organization) Recommendation on Domain Tasting

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) community stakeholders are increasingly concerned about domain tasting, which is the practice of using the add grace period (AGP (Add Grace Period)) to register domain names in bulk in order to test their profitability.

Whereas, on 17 April 2008, the GNSO (Generic Names Supporting Organization) Council approved, by a Supermajority vote a motion to prohibit any gTLD (generic Top Level Domain) operator that has implemented an AGP (Add Grace Period) from offering a refund for any domain name deleted during the AGP (Add Grace Period) 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> (<http://gnso.icann.org/meetings/minutes-gnso-17apr08.shtml>)>

Whereas, on 25 April 2008, the GNSO (Generic Names Supporting Organization) Council forwarded its formal "Report to the ICANN (Internet Corporation for Assigned Names and Numbers) Board - Recommendation for Domain Tasting" <<http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf> (<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> ([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>, which includes (at the encouragement of the GNSO (Generic Names Supporting Organization) Council) a proposal similar to the GNSO (Generic Names Supporting Organization) policy recommendation to expand the applicability of the ICANN (Internet Corporation for Assigned Names and Numbers) transaction fee in order to limit domain tasting.

Resolved (2008.06.26.06), the Board adopts the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) approved an update to the Strategic Plan in December 2007. <<http://www.icann.org/strategic-plan/> ([/strategic-plan](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 (Internet Corporation for Assigned Names and Numbers) meeting and was posted in February 2008 for community consultation. <<http://www.icann.org/announcements/announcement-2-04feb08.htm> ([/announcements/announcement-2-04feb08.htm](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> ([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has actively solicited community feedback and consultation with ICANN (Internet Corporation for Assigned Names and Numbers)'s constituencies. <<http://forum.icann.org/lists/op-budget-fy2009/> (<http://forum.icann.org/lists/op-budget-fy2009/>)>

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) 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> (/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf)>

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board Finance Committee met in Paris on 2 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 (Internet Corporation for Assigned Names and Numbers)'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> (/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 (DNS Security Extensions) in .ORG

Whereas, Public Interest Registry has submitted a proposal to implement DNS (Domain Name System) Security Extensions (DNSSEC (DNS Security Extensions)) in .ORG. <<http://icann.org/registries/rsep/pir-request-03apr08.pdf> (<http://icann.org/registries/rsep/pir-request-03apr08.pdf>)>

Whereas, staff has evaluated the .ORG DNSSEC (DNS Security Extensions) proposal as a new registry service via the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/> (<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> (<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> (<http://icann.org/registries/rsep/rsep.html>)> found a likelihood of security and stability issues associated with the proposed implementation. The RSTEP (Registry Services Technical Evaluation Panel) 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> (<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>)>

Whereas, the Chair of the SSAC (Security and Stability Advisory Committee) has advised that RSTEP (Registry Services Technical Evaluation Panel)'s thorough investigation of every issue that has been raised concerning the security and stability effects of DNSSEC (DNS Security Extensions) 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 (DNS Security Extensions) deployment in .ORG can be undertaken.

Whereas, PIR intends to implement DNSSEC (DNS Security Extensions) only after extended testing and consultation.

Resolved (2008.06.26.08), that PIR's proposal to implement DNSSEC (DNS Security Extensions) in .ORG is approved, with the understanding that PIR will continue to cooperate and consult with ICANN (Internet Corporation for Assigned Names and Numbers) 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 (DNS Security Extensions) in .ORG.

| [back to top](#) |

ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors' Code of Conduct

Whereas, the members of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) structures.

Resolved (2008.06.26.11), the Board establishes the following independent review working groups:

- ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Domain Name System) Root Server System Advisory Committee (RSSAC) Independent Review Working Group: Harald Alvestrand (Chair), Steve Crocker and Bruce Tonkin.
- Security and Stability Advisory Committee (SSAC (Security and Stability Advisory Committee)) Independent Review Working Group: Robert Blokzijl, Dennis Jennings (Chair), Reinhard Scholl and Suzanne Woolf.

[| back to top |](#)

Update on Independent Reviews of ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Generic Names Supporting Organization) Improvements

Whereas, Article IV, Section 4 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws calls for periodic reviews of the performance and operation of ICANN (Internet Corporation for Assigned Names and Numbers)'s structures

an entity or entities independent of the organization under review.

Whereas, the Board created the "Board Governance Committee GNSO (Generic Names Supporting Organization) Review Working Group" (Working Group) to consider the independent review of the GNSO (Generic Names Supporting Organization) and other relevant input, and recommend to the Board Governance Committee a comprehensive proposal to improve the effectiveness of the GNSO (Generic Names Supporting Organization), including its policy activities, structure, operations and communications.

Whereas, the Working Group engaged in extensive public consultation and discussions, considered all input, and developed final report <<http://www.icann.org/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf> (/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf)> containing a comprehensive and exhaustive list of proposed recommendations on GNSO (Generic Names Supporting Organization) improvements.

Whereas, the Board Governance Committee determined that the GNSO (Generic Names Supporting Organization) 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/lis/gnso-improvements-report-2008/msg00033.html> (<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html>)> public comments on the final report.

Whereas, the GNSO (Generic Names Supporting Organization) 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 the Board at its New Delhi meeting.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s contracted parties.

Resolved (2008.06.26.13), the Board endorses the recommendations of the Board Governance Committee's GNSO (Generic Names Supporting Organization) Review Working Group, other than on GNSO (Generic Names Supporting Organization) Council restructuring, and requests that the GNSO (Generic Names Supporting Organization) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)," and "FAQ." <<http://icann.org/en/announcements/announcement-16jun08-en.htm> (<http://icann.org/en/announcements/announcement-16jun08-en.htm>) >

Whereas, these documents and the proposals contained in them have been discussed at ICANN (Internet Corporation for Assigned Names and Numbers)'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/> (<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 (Internet Corporation for Assigned Names and Numbers) staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN (Internet Corporation for Assigned Names and Numbers) community to participate in the continuing consultations on the future of ICANN (Internet Corporation for Assigned Names and Numbers) by reviewing and submitting comments to the PSC by 31 July 2008.

Selection of Mexico City for March 2009 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) At-Large Summit Proposal

Whereas, at the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in New Delhi in February 2008, the Board resolved to direct staff to work with the ALAC (At-Large Advisory Committee) to finalise a proposal to fund an ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit, for consideration as part of the 2008-2009 operating plan and budget process. <<http://www.icann.org/minutes/resolutions-15feb08.htm> (/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> (/financials/fiscal-30jun09.htm)>

Whereas, a proposal for the Summit was completed and submitted shortly before the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in Paris.

Resolved (2008.06.26.16), the Board approves the proposal to hold an ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit as a one-time special event, and requests that the ALAC (At-Large Advisory Committee) work with ICANN (Internet Corporation for Assigned Names and Numbers) 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 (At-Large Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) for over five years.

Whereas, Steve has served ICANN (Internet Corporation for Assigned Names and Numbers) in a number of roles, currently as ICANN (Internet Corporation for Assigned Names and Numbers)'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 (Internet Corporation for Assigned Names and Numbers) that he has accepted new position with the Internet Society (ISOC (Internet Society)), and that his employment with ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) Board wishes to recognize Steve for his service to ICANN (Internet Corporation for Assigned Names and Numbers) and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN (Internet Corporation for Assigned Names and Numbers) meetings and his extraordinary efforts have been most appreciated.

Resolved (2008.06.26.18), the ICANN (Internet Corporation for Assigned Names and Numbers) Board formally thanks Steve

Conte for his service to [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#), and expresses its good wishes to Steve for his work with [ISOC \(Internet Society\)](#) 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 Nommege Internet en Coopération ([AFNIC \(Association Franaise pour le Nommege Internet en Coopration\)](#)), France Télécom, Groupe Jutheu Husson, Stichting Internet Domeinregistratie Nederland (SIDN), Association Marocaine des Professionnels des Telecommunications (MATI), Afiliis 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 \(Council of European National Top level domain Registries\)](#)), 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 \(Network Information Center\).AT Internet Verwaltungs und Betriebsgesellschaft m.b.H](#), UNINETT Norid A/S, IIT – CNR (Registro del [ccTLD \(Country Code Top Level Domain\).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 \(World Wide Web Consortium\)](#).

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 event at the [ICANN \(Internet Corporation for Assigned Names and Numbers\) Paris meeting](#).

The Board expresses its appreciation to the scribes Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) staff for their efforts in facilitating the smooth operation of the meeting. [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) 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 \(Internet Corporation for Assigned Names and Numbers\)](#) 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 bandwidth. 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 meetir Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and [ICANN \(Internet Corporation for Assigned Names and Numbers\) 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 |](#)

[Board \(/en/groups/board\)](#)

[Meetings \(/en/groups/board/meetings\)](#)

[Documents \(/en/groups/board/documents\)](#)

[Board & Chair Self-Appraisal \(/en/groups/board/documents/appraisals\)](#)

[Board Compensation Election \(/en/groups/board/documents/ce\)](#)

[Procedure Manual \(/en/groups/board/documents/draft-procedure-manual-09oct12-en\)](/en/groups/board/documents/draft-procedure-manual-09oct12-en)

[Resolutions Wiki \(https://community.icann.org/display/tap/ICANN+Board+Resolutions\)](https://community.icann.org/display/tap/ICANN+Board+Resolutions)

[Statements of Interest \(/en/groups/board/documents/sois\)](/en/groups/board/documents/sois)

[Audit Committee \(/en/groups/board/audit\)](/en/groups/board/audit)

[Board Governance Committee \(/en/groups/board/governance\)](/en/groups/board/governance)

[Compensation Committee \(/en/groups/board/compensation\)](/en/groups/board/compensation)

[Executive Committee \(/en/groups/board/executive\)](/en/groups/board/executive)

[Finance Committee \(/en/groups/board/finance\)](/en/groups/board/finance)

[New gTLD Program Committee \(/en/groups/board/new-gtld\)](/en/groups/board/new-gtld)

[Risk Committee \(/en/groups/board/risk\)](/en/groups/board/risk)

[Structural Improvements Committee \(/en/groups/board/improvements\)](/en/groups/board/improvements)

[ALAC \(http://www.atlarge.icann.org\)](http://www.atlarge.icann.org)

[ASO \(http://aso.icann.org\)](http://aso.icann.org)

[ccNSO \(http://ccnso.icann.org\)](http://ccnso.icann.org)

[GAC \(http://gac.icann.org\)](http://gac.icann.org)

[GNSO \(http://gnso.icann.org\)](http://gnso.icann.org)

[IETF \(/en/groups/ietf\)](/en/groups/ietf)

[NRO \(http://www.nro.net\)](http://www.nro.net)

[NomCom \(/en/groups/nomcom\)](/en/groups/nomcom)

[RSSAC \(/en/groups/rssac\)](/en/groups/rssac)

[SSAC \(/en/groups/ssac\)](/en/groups/ssac)

[Technical Liaison Group \(/en/groups/tlg\)](/en/groups/tlg)

[Other Groups \(/en/groups/other\)](/en/groups/other)

[Past Groups \(/en/groups/past\)](/en/groups/past)

[Organizational Reviews \(/en/groups/reviews\)](/en/groups/reviews)

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RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

Community Wiki (<http://community.icann.org>)

Meetings (<http://meetings.icann.org>)

New gTLDs (<http://newgtlds.icann.org>)

WHOIS (<http://whois.icann.org>)

Help

(</en/help>)

Acronym Helper

Reference Material 9.

TRANSLATE

with 

To translate any GNSO document (PDF, DOC, etc.), use Google Translate.

Last Updated: 4 September 2009

Final Report - Introduction of New Generic Top-Level Domains

Date: 8 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

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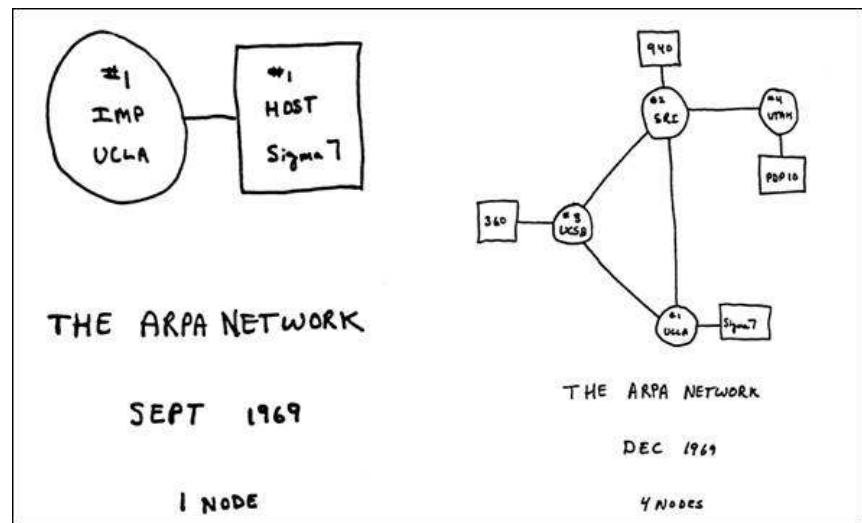


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13 Nov

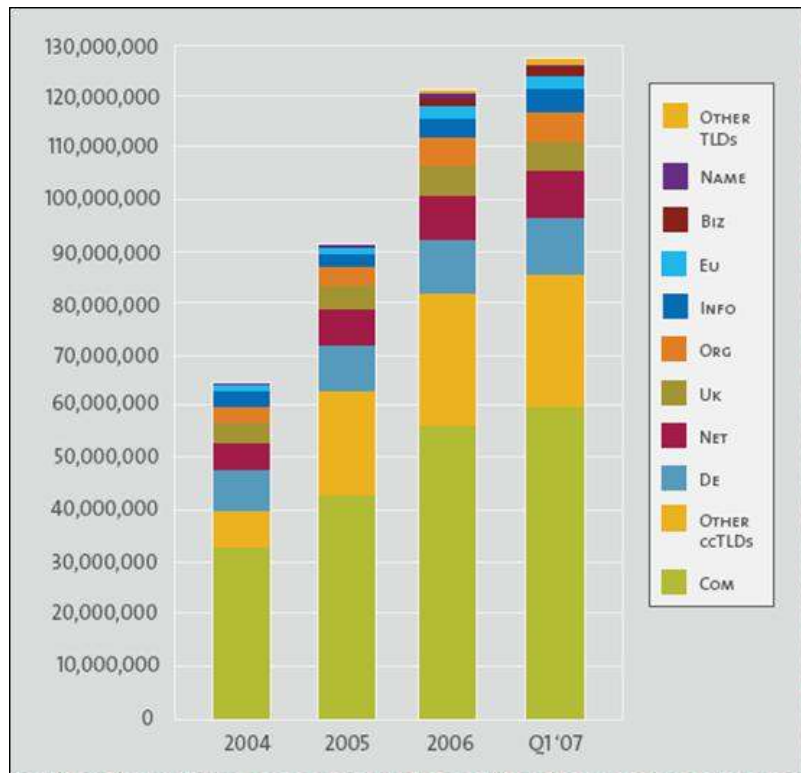
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dramatically changed the nature of the internet. The 1969 ARPANET diagram shows the initial design of a network that is now global in its reach and an integral part of many lives and businesses. The policy recommendations found here illustrate the 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 CANN 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 CANN 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 ETF'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. Posel & 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 multidimensional 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 CANN 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 CANN'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 CANN should add new gTLDs to the root. The second is that CANN should begin the deployment of new gTLDs with an initial rollout of six or 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.registrars.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 applications provides more impetus to implement a system that enables the ongoing introduction of new top level domains[14]. In addition in areas from non-registered 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 Consultancy 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 online 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 historical 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 au, books, travel and music. The Committee has opted to enable potential applicants to self-select rings that are either the most appropriate for their customers or potentially the most marketable. It is expected that applicants will apply for targeted community rings such as travel for the travel industry and ca for the Catalan community as well as some generic rings. 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 names (IDNs) 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 CANN'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 greater detail with the CANN 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 CANN 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 recommendations have been the subject of numerous public comment periods and in extensive discussion across a range of stakeholders including CANN's GNSO Consultancies, CANN Supporting Organizations and Advisory Committees and members of the broader internet using public that is included in CANN'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 Protection 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 Consultancy Statement, 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 CANN's primary mission which is to ensure the security and stability of the DNS and in particular the internet root server system[24].

2 The Principles are a combination of GNSO Committee priorities, CANN's 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 Consultancies [25].

3 CANN'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 Consultancies.

	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 & 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 domains.	M3 & CV 4, 10

	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	
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 meet 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 Industrial 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 .DN service then CANN's .DN guidelines[28] must be followed	M1 & CV1
19	Registrars must use only CANN 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 Minor Issues Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
G A	The application process will provide a pre-defined roadmap for applicants. It encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
G B	Application fees will be designed to ensure that adequate resources exist to cover the operational costs of administering the new gTLD process. Application fees may differ for applicants.	CV 5, 6, 8 & 9
G C	CANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
G 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
G E	The application submission date will be at least four months after the issue of the Request for Proposal and CANN will promote the opening of the application round.	CV 9 & 10
G 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
G 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 par 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 G.P.	CV 7, 10
G I	External dispute providers will give decisions on objections.	CV 10
G J	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
G K	The base contract should balance market certainty and flexibility for CANN to accommodate a rapidly changing marketplace.	CV 4, 10
G L	CANN should take a consistent approach to the establishment of registry fees.	CV 5
G M	The use of personal data must be limited to the purpose for which it is collected.	CV 8
G N	CANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical 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
G O	CANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3, 7
G P*	CANN 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
G 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	

	<p>he communi y (perhaps like he RSTEP pool of panelis s from which a small panel would be cons i u ed for each objec ion)</p> <p>Guidelines</p> <p>The ask of he panel is he de ermina ion of subs an ial opposi ion</p> <p>a) substantial in de ermining subs an ial he panel will assess he following significa ion por ion communi y explici ly arge ing implici ly arge ing es ablished ins i u ion formal exis ence de rimen</p> <p>b) significant portion in de ermining significa por ion he panel will assess he balance be ween he level of objec ion submi ed by one or more es ablished ins i u ions and he level of suppor provided in he applica ion from one or more es ablished ins i u ions The panel will assess significance propor iona e o he explici or implici arge ing</p> <p>c) community communi y should be in erpre ed broadly and will include for example an economic sec or a cul ural communi y or a linguis ic communi y may be a closely rela ed communi y which believes i is impac ed</p> <p>d) explicitly targeting explici ly arge ing means here is a descrip ion of he in ended use of he TLD in he applica ion</p> <p>e) implicitly targeting implici ly arge ing means ha he objec or makes an assump ion of arge ing or ha he objec or believes here may be confusion by users over i s in ended use</p> <p>f) established institution an ins i u ion ha has been in formal exis ence for a leas 5 years n excep ional cases s anding may be gran ed o an ins i u ion ha has been in exis ence for fewer han 5 years</p> <p>Excep ional circums ances include bu are no limi ed o a re organiza ion merger or an inheren ly younger communi y</p> <p>The following CANN organiza ions are defined as es ablished ins i u ions GAC ALAC GNSO ccNSO ASO</p> <p>g) formal existence formal exis ence may be demons ra ed by appropria e public regis ra ion public his orical evidence valida ion by a governmen in ergovernmen al organiza ion in erna ional rea y organiza ion or similar</p> <p>h) detriment he objec or mus provide suficien evidence o allow he panel o de ermine ha here would be a likelihood of de rimen o he righ s or legi ima e in eres s of he communi y or o users more widely</p>	
G Q	CANN s aff will provide an au oma ic reply o all hose who submi public commen s ha will explain he objec ion procedure	
G R	Once formal objec ions or dispu es are accep ed for review here will be a cooling off period o allow par ies o resolve he dispu e or objec ion before review by he panel is ini ia ed	

* The NCUC submi ed Minori y S a emen s on mplemen a ion Guidelines F H & P The remainder of he mplemen a ion Guidelines have suppor from all GNSO Cons i uencies

1 This se of implemen a ion guidelines is he resul of de ailed discussion par icularly wi h respec o he wo ICANN Staff Discussion Points[31] documen s ha were prepared o facili a e consul a ion wi h he GNSO Commi ee abou he implemen a ion impac s of he proposed policy Recommenda ions The mplemen a ion Guidelines will be used o inform he inal mplemen a ion Plan which is approved by he CANN Board

2 The Discussion Points documen s con ain draf flowchar s which have been developed by he mplemen a ion Team and which will be upda ed based on he final vo e of he GNSO Council and he direc ion of he CANN Board The Discussion Points documen s have been used in he ongoing in ernal implemen a ion discussions ha have focused on ensuring ha draf recommenda ions proposed by he Commi ee are implemen able in an eficien and ransparen manner[32] The flowchar se ing ou he proposed Con en ion Evalua ion Process is a more de ailed componen wi hin he Applica ion Evalua ion Process and will be amended o ake in o account he inpu s from Recommenda ion 20 and i s rela ed mplemen a ion Guidelines

3 This policy developmen process has been designed o produce a sys emised and ongoing mechanism for applican s o propose new op level domains The Reques for Proposals (RFP) for he firs round will include scheduling informa ion for he subsequen rounds o occur wi hin one year Af er he firs round of new applica ions he applica ion sys em will be evalua ed by CANN s TLDs Projec Office o assess he effec iveness of he applica ion sys em Success me rics will be developed and any necessary adjus men s made o he process for subsequen rounds

4 The following sec ions se ou in de ail he explana ion for he Commi ee s recommenda ions 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 Commi ee was asked o address he ques ion of whe her o in roduce new op level domains The Commi ee recommends ha CANN should implemen a process ha allows he in roduc ion of new op level domains and ha work should proceed o develop policies ha will enable he in roduc ion of new generic op level domains aking in o 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 Constitutional Conditions (Term of Reference 4)

- 3 CANN'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] which 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 "CANN should add new gTLDs on the road. The second is that CANN should begin the deployment of new gTLDs with an initial rollout of six or 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 historical materials which are posted at http://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 Consultancy Statements [35] and a set of Consultancy Impact Statements [36] which 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 CANN 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 ASC 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 CANN'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, Paragraph 7, Section E of the GNSO's Policy Development Process requires the submission of "consultancy impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Consultancies had submitted Consultancy Impact Statements (CIS) to the gTLD council mailing list [37]. Each of these 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 realisation of those recommendations. GNSO Committee Chair and Nominating Committee member Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.
- 9 All Consultancies support the introduction of new TLDs particularly if the application process is transparent and objective. For example the SPCP said that "the SPCP 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 consultancy urges CANN to ensure they are scrupulously observed during the applications evaluation process". The Business Consultancies (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 opportunity for innovative online business models". The Registrar Consultancy (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 the opportunity comes with the costs of 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 Consultancy (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, in 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 "CANN 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 applications 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 his recommendation has support from all Consultancies the following sections outline 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 Consultancies. Ms Doria accepted the recommendation with the concern expressed below [39].
 - ii) The list of existing top level domains is maintained by ANA and is listed in full on CANN's website [40]. Naturally as the application process enables the operation of new top level domains this list will get much longer and the

es more complex. The RyC in its impact Statement said that "This recommendation is especially important for the RyC as of prime concern for the RyC has been the introduction of new gTLDs results in a ubiquitous experience for internet users that minimizes user confusion. gTLD registrations will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLDs or with s-rings that are introduced in the future. There is a strong possibility of significant impact on gTLD registrations if DNS versions of existing ASCII gTLDs are reduced by registrations different than the ASCII gTLD registrations. No only could there be user confusion in both email and web applications but disruptive resolution processes could be greatly complicated." The SPCP 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 consumer demand and support concerns. On the other hand applying the concept too broadly would inhibit gTLD applications and ultimately limit choice of 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] in international treaty agreements and covenants to arrive at a common understanding that s-rings 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 Organization'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 s-rings 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 applications 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] describes the notion of confusion and describes creating confusion as "to create confusion by any means whatsoever" (Article 10bis (3) (1)) and further being "liable to mislead the public" (Article 10bis (3) (3)). The meaning 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 trademark law requires applications 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 hereof or in such near resemblance hereof 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.bilaw.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/direct.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 at http://www.patent.gov.uk/ml/decisionmaking/law/law_manual.htm).
- xii) The Committee also looked in detail at the existing provisions of CANN's Registrar Accreditation Agreement, particularly Section 3.7.7.9 [50] which says that "The Registered Name Holder shall represent that he has 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

ASC top level domains. On 22 March 2007, the DN WG released its *Outcomes Report*[51] and the Working Group presented to the GNSO Committee. The Working Group's exploration of DN specific issues confirmed that the new TLD recommendations are valid for DN TLDs. The full DN WG Report is found in Part B of the *Report*.

- xiv) The technical testing for DNAs at the top level is not yet completed although some progress is being made. Given this and the other work that is taking place around the introduction of DNAs at the top level, there are some critical factors that may impede the immediate acceptance of new DN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASC 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 applications 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 steps 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 Committees. 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, as it had been drafted and inserted 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 PC and the NCUC in their respective Committees impacted. Some members (CS) had differing views. The NCUC argued that "there is no recognition that trademarks (and other legal rights) have legal limits and defenses". The PC 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 Rights of others".

3 Recommendation 4 Discussion -- Strings must not cause any technical instability.

- i) This recommendation is supported by all GNSO Committees 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 CS, the SPCP stated that "this is especially important in the avoidance of any negative impact on network activities. The SPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational 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 of our sectors)". The PC 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 list 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 Committees. 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 (ASC or DN) 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 CANN context. Each of the existing CANN registry

con rac s has provisions wi hin i ha govern he use of reserved words Some of hese recommenda ions will become par of he con rac ual condi ions for new regis ry opera ors

- iv The Reserved Names Working Group (RN WG) developed a series of recommenda ions across a broad spec rum of reserved words The Working Group s *Final Report*^[57] was reviewed and he recommenda ions upda ed by he Commi ee a CANN s Puer o Rico mee ing and wi h respec o he recommenda ions rela ing o DNS wi h DN exper s The final recommenda ions are included in he following able

	Reserved Name Category	Domain Name Level(s)	Recommendation
1	CANN & ANA	All ASC	The names listed as CANN and ANA names will be reserved at all levels
2	CANN & ANA	Top level DN	Any names that appear in the DN evaluation facility [58] which consist exclusively of translations of example or es that appear in the document at http://www.icann.org/opics/idn/idn_evaluation_plan_v2%209.pdf shall be reserved
3	CANN & ANA	2 nd & 3 rd levels DN	Any names that appear in the DN evaluation facility which consist exclusively of translations of example or es that appear in the document at http://www.icann.org/opics/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 without further allowance for any equivalent marks that may explicitly be made available in future revisions of the DNA protocol
5	Single and Two Character DNS	DNA 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 DN Guidelines
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. Further research at a later date demonstrates that the technical issues and concerns are addressed. The topic of releasing reservations as usual can be reconsidered
7	Single Letters and Digits	2 nd Level	In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable)
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 a historic [59] Examples include AU DE UK
11	Any combination of Two Letters Digits	2 nd Level	Registrars may propose release provided that measures to avoid confusion with any corresponding country codes are implemented [60]. Examples include ba.aero ub.ca 53.com 3M.com e8.org
12	Tagged Names	Top Level ASC	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 DN	For each DN gTLD proposed, applicants must provide both the "ASCII compatible encoding" ("A label") and the "Unicode display form" ("U label") [62]. For example: <ul style="list-style-type: none"> If the Chinese word for Beijing is proposed as a new gTLD, the applicant would be required to provide the A label (xn 1q90i) and the U label (If the Japanese word for Tokyo is proposed as a new gTLD, the applicant would be required to provide the A label (xn 1qs71d) and the U label (
14	Tagged Names	2 nd Level ASC	The current reservation requirements be reworded to say " <i>In the absence of standardization activity and appropriate IANA registration</i> , 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 (2 nd) level [63], added words in <i>italics</i> (Note that names starting with "xn " may only be used if the current CANN DN Guidelines are followed by a gTLD registry)
15	Tagged Names	3 rd Level ASC	All labels with hyphens in both the third and fourth character positions (e.g. "bq 1k2n4h4b" or "xn ndk061n") must be reserved in

	Reserved Name Category	Domain Name Level(s)	Recommendation
			ASC a the hird (3 rd level) for gTLD regis ries ha regis er names a the hird level "[64] added words in <i>italics</i> (No e ha names s ar ing wi h "xn " may only be used if he curren CANN DN Guidelines are followed by a gTLD regis ry)
16	NC WHO S WWW	Top ASC	The following names mus be reserved nic whois www
17	NC WHO S WWW	Top DN	Do no ry o ransla e nic whois and www in o Unicode versions for various scrip s or o reserve any ACE versions of such ransla ions or ransli era ions if hey exis
18	NC WHO S WWW	Second and Third* ASC	The following names mus be reserved for use in connec ion wi h he opera ion of he regis ry for he Regis ry TLD nic whois www Regis ry Opera or may use hem bu upon conclusion of Regis ry Opera or s designa ion as opera or of he regis ry for he Regis ry TLD hey shall be ransferred as specified by CANN (*Third level only applies in cases where a regis ry offers regis ra ions a the hird level)
19	NC WHO S WWW	Second and Third* DN	Do no ry o ransla e nic whois and www in o Unicode versions for various scrip s or o reserve any ACE versions of such ransla ions or ransli era ions if hey exis excep on a case by case basis as proposed by given regis ries (*Third level only applies in cases where a regis ry offers regis ra ions a the hird level)
20	Geographic and geopolical	Top Level ASC and DN	<p>There should be no geographical reserved names (ie no exclusionary lis no presump ive righ of regis ra ion no separa e adminis ra ive procedure e c) The proposed challenge mechanisms curren ly being proposed in he draf new gTLD process would allow na ional or local governmen s o ini ia e a challenge herefore no addi ional pro ec ion mechanisms are needed Po en ial applican s for a new TLD need o represen ha the use of he proposed s ring is no in viola ion of he na ional laws in which he applican is incorpora ed</p> <p>However new TLD applican s in eres ed in applying for a TLD ha incorpora es a coun ry erri ory or place name should be advised of he GAC Principles and he advisory role ves ed o i under he CANN Bylaws Addi ionaly a summary overview of he obs acles encoun ered by previous applican s involving similar TLDs should be provided o allow an applican o make an informed decision Po en ial applican s should also be advised ha the failure of he GAC or an individual GAC member o file a challenge during he TLD applica ion process does no consi ue a waiver of he au hori y ves ed o he GAC under he CANN Bylaws</p> <p><i>Note New gTLD Recommendation 20</i></p>
21	Geographic and geopolical	All Levels ASC and DN	<p>The erm geopolical names should be avoided un il such ime ha a useful defini ion can be adop ed The basis for his recommenda ion is founded on he po en ial ambigui y regarding he defini ion of he erm and he lack of any specific defini ion of i in he W PO Second Repor on Domain Names or GAC recommenda ions</p> <p><i>Note New gTLD Recommendation 20</i></p>
22	Geographic and geopolical	Second Level & Third Level if applicable ASC & DN	<p>The consensus view of he working group is given he lack of any es ablished in erna ional law on he subjec conflic ing legal opinions and conflic ing recommenda ions emerging from various governmen al fora he curren geographical reserva ion provision con ained in he sTLD con rac s during he 2004 Round should be removed and harmonized wi h he more recen ly execu ed COM NET ORG BZ and NFO regis ry con rac s The only excep ion o his consensus recommenda ion is hose regis ries incorpora ed/organized under coun ries ha require addi ional pro ec ion for geographical iden ifiers n his ins ance he regis ry would have o incorpora e appropria e mechanisms o comply wi h heir na ional/local laws</p> <p>For hose regis ries incorpora ed/organized under he laws of hose coun ries ha have expressly suppor ed he guidelines of he W PO S anding Commi ee on he Law of Trademarks ndus rial Designs and Geographical ndica ions as adop ed by he W PO General Assembly i is s rongly recommended (bu no manda ed) ha these regis ries ake appropria e ac ion o promp ly implemen pro ec ions ha are in line wi h these W PO guidelines and are in accordance wi h he relevan na ional laws of he applicable Member S a e</p> <p><i>Note New gTLD Recommendation 20</i></p>
23	gTLD Reserved Names	Second & Third Level ASC and DN (when applicable)	<p>Absen jus ifica ion for user confusion[65] he recommenda ion is ha gTLD s rings should no longer be reserved from regis ra ion for new gTLDs a the second or when applicable a the hird level Applican s for new gTLDs should ake in o considera ion possible abusive or confusing uses of exis ing gTLD s rings a the second level of heir corresponding gTLD based on he na ure of heir gTLD</p>

	Reserved Name Category	Domain Name Level(s)	Recommendation
			when developing the startup process for their gTLD
24	Conversational Names	All Levels ASC & DN	There should not be a new reserved names category for Conversational Names
25	Conversational Names	Top Level ASC & DN	There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process <i>Note New gTLD Recommendation 6</i>
26	Conversational Names	Top Level ASC & DN	In the event of the initiation of a CN DRP process applications for the label will be placed in a HOLD status. It 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] <i>Note New gTLD Recommendation 6</i>
27	Conversational Names	Top Level ASC & DN	The new GTLD Conversational Names Dispute Resolution Panel should be established as a standing mechanism. It has convened a timeline a dispute is initiated. Preliminary elements of the process are provided in this report but further work is needed in this area. <i>Note New gTLD Recommendation 6</i>
28	Conversational Names	Top Level ASC & DN	Within the dispute process disputes would be initiated by the CANN 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 CANN Advisory Committee or CANN Supporting Organization must document the position of each member within the committee or organization (i.e. support/opposition/absence) in compliance with both the spirit and letter of the CANN bylaws regarding openness and transparency. <i>Note New gTLD Recommendation 6</i>
29	Conversational Names	Top Level ASC & DN	Further work is needed to develop predictable and transparent criteria that can be used by the Conversational Resolution Panel. These criteria must take into account the need to: § Protect freedom of expression § Affirm the fundamental human rights in the dignity and worth of the human person and the equal rights of men and women § Take into account sensitivities regarding terms with cultural and religious significance. <i>Note New gTLD Recommendation 6</i>
30	Conversational Names	Top Level ASC & DN	In any dispute resolution process or sequence of issue resolution processes the Conversational name category should be the last category considered. <i>Note New gTLD Recommendation 6</i>

v. With respect to geographic terms the NCUC's CSs advised 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 "CANN 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 CANN 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 Consiliencies except the NCUC. The NCUC has submitted a Minority Statement which is found in full in Annex A. The NCUC's earlier Consiliency Impact Statement is found along with all the GNSO Consiliency Impact Statements in Part B of this report. Ms Doria has submitted individual comments^[67]. The Committee has discussed this recommendation in greater detail and has a deep understanding of 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 CS says "we oppose any string criteria based on morality and public order".
- ii Other Consiliencies did not address this recommendation in their CSs. The Implementation Team has tried to balance these views by establishing an Implementation Plan. It recognises the practical effect of opening a new top-level domain application system. It will allow applications. Some members of the community do not agree with Whills. CANN does have a technical coordination remit. It must also put in place a system of handling objections. It is also necessary to develop guidance for independent evaluators asked 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. It issues of morality and public order. This was done not to make decisions about acceptable strings but to provide a series of potential issues 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 applications about areas that may raise objections. The phrasing was also intended to set parameters for potential objections so that any objection to an application could be analysed within the framework of broadly accepted legal norms. Independent evaluators could use across a broad spectrum of possible objections. The Committee also sought to ensure that the objection 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 "conary 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 Universal Declaration of Human Rights (<http://www.unhcr.ch/udhr/lang/eng.htm>) says "Everyone has the right to freedom of opinion and expression; his 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 deceive "Conary 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 his 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 read 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/direct.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/abusive 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, abusive swear words. If a mark is merely disasteful, 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 disasteful 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, see <http://www.patent.gov.uk/m/decisionmaking/law/lawmanual.htm>.
- viii This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about the effect 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 Consiliencies 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 operators' 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 Comments (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 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 what 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 CSs. "The SPCP 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 of our 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 his 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 his requirements in detail and determined that it was reasonable to request his information from potential applicants was also consistent with past practices including the prior new TLD rounds in 2000 and 2003/2004, the new and org rebids and the conditions associated with CANN 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 his 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 SPCP discussed the importance of his recommendation in its CS as found in Recommendation 7 above.
- vi. The NCUC's CS addressed his recommendation by saying "we support his recommendation on the extent that the criteria is fully limited to minimum financial and organisational operational 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 CANN's previous TLD rounds in 2000 and 2003/2004 and with its rebid of both the new and org registry contracts.
- ii. It is also consistent with CANN'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 CANN'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 his recommendation in its CS, that said "his 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 submission 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 his recommendation and again stress the need for all criteria to be limited to minimum operational, financial and technical considerations. We also 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 CANN meeting in Puer to 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. This is prior to the beginning of the four-month window preceding the application submission period.
- iv. The RyC in its CS said "like the comments for Recommendation 9, we believe that his recommendation will facilitate a more cost-effective and timely application process and hereby 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. No 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 CANN Board.
- iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the

CANN 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 SPCP expressed its support for this recommendation. CS 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 a time rather than many all at once. Recommendation 18 on the use of DNS 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 Teams' *Discussion Points* document.
- iv The NCUC's response to this recommendation in its earlier CS says in part " recommendation 20 swallows up any attempt to narrow the string criteria of technical, operational and financial evaluations. 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 Teams' 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 Consiliencies and Ms Doria.
- ii This recommendation is consistent with the existing registry contractual provisions found in, for example, the commercial 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 operators with reasonable commercial terms.
- iv The RyC commented on this recommendation in its CS saying that "the members of the RyC have learned firsthand 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 consolidations. Even the most successful registries have taken many years to recoup their initial investments. 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 online community."

15 Recommendation 15 -- There must be renewal expectancy.

- i This recommendation is consistent with the existing registry contractual provisions found in, for example, the commercial agreements and is supported by all Consiliencies. 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 operators with reasonable commercial terms.
- iii See the CS 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 Consiliencies and Ms Doria.
- ii The full set of existing CANN registry contractual terms can be found here <http://www.icann.org/registries/agreements.htm> and CANN's seven current Consensus Policies are found at http://www.icann.org/general/consensus_policies.htm.
- iii CANN 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 Consiliencies 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 CANN 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 practices and standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and online 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, CANN has developed and published a new approach to its compliance activities. These are found on CANN'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 discrete offer, 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 Consiliencies and Ms Doria. The introduction of internationalized domain names at the root presents CANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical design[76] has been completed and a series of live root tests will take place during the remainder of 2007.
- ii The Committee recognizes that there is ongoing work in other parts of the CANN organization that needs to be factored in to

the application process has will apply to DN applications. The work includes the President's Committee on DNS and the GAC and ccNSO joint working group on DNS.

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 CS, 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 his *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 advisors (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. If 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 CANN community or CANN. If 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 its conclusion (the "Supplemental Recommendation") to the Board including an explanation for its current recommendation. If 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 CANN community or CANN. 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 make 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 CANN 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) will completely undermine ICANN's efforts to make the gTLD application process predictable and instead make the evaluation process arbitrary, subjective and political
- 2) will have the effect of suppressing free and diverse expression
- 3) exposes ICANN to litigation risks
- 4) 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 that 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 breach of "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.

This 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 the litigation. Nothing could be further from the truth. By reducing subjective and culturally divisive standards in the evaluation process, Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department, it undisputedly has the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot "constrain away" the constitutional protections of its citizens. ICANN any more than it can engage in the censorship of 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, asks ICANN to create rules and adjudicate disputes about what is permissible expression, enables it to censor expression in domain names that would be lawful in some countries, would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "moralistic" 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 inherently 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 in 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, mandating "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 CANN's authority ignores internet users' free expression rights and its adoption would impose an enormous burden on and liability for CANN 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 guidelines

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 strongly supporting the introduction of DN TLDs, I am concerned that the unresolved issues with DN ccTLD equivalents may interfere with the introduction of DN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASC TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While favoring 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. In the first instance, I believe that this is essentially a technical issue that should have been resolved with reference to typography, homographs or phonographic 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 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 DNS, 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 types 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 DNABIS is completed, I am concerned about establishing reserved name rules connected to DNS. My primary concern involves policy decisions made in CANN for reserved names becoming hard-coded in the DNABIS 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 lists of allowable exclusions we have made, the possible exclusion lists include a very large and diverse subject matter. The process of the consideration of all possible religious and ethical systems, CANN or the panel of reviewers will also have to decide between different sets of

#	Level of support	Explanation
		moral principles e.g. a moralist who 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 do not understand how CANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining a least de facto CANN definition of morality? And while I am not a strict consequentialist and some times allow for the broader interpretation of CANN's mission do not believe it includes the definition of a system of morality
7	Support	
8	Accept with concern	While accepting 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 radiational 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 difference of financial opportunities or capabilities that are not 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 support the idea that a registry that is doing a good job should have the expectation of renewal 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 be some procedure for correcting the situation before renewal.
16 19	Support	
20	Support with concerns	In general support the policy though do have concerns about the implementation which discuss below in relation to G(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	Strongly support the idea of financial assistance programs and fee reduction for less developed countries and 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 have nots in the name and may lead to a foreign land grab of choice TLD names especially DN 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 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 CANN's 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 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 to 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 necessary 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 do not believe that the ability to pay for a review will provide a reasonable criteria nor do I believe

#	Level of support	Explanation
		<p>that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor</p> <p>believe that CANN 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 believe as recommended in the Reserved Names Working group report that the ALAC and GAC may be an important part of the solution G (P) currently includes support for raising ALAC and GAC as established institutions in regard to raising objections to TLD concerns believe this is an important part of the policy recommendation and should be retained in the implementation 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 believe we do have precedence for such an operational role for volunteers within CANN 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 strongly recommend that such a solution be included in the implementation of the New gTLD process</p>
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 of support 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 CANN 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 institutions formal existence duration

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 proportionately 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 than 5 years. Exceptional circumstances include but are not limited to reorganization, merger, or an inherently younger community. The following CANN 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) de rimen

<< A >> Evidence of de rimen o the communi y or o users more widely mus be provided
 << B >> [A likelihood of de rimen o the communi y or o users more widely mus be provided]

Recommendation #20

The Non Commercial Users Cons iuency (NCUC) Dissen ing S a emen on Recommenda ion #20 of he New GTLD Commi ees Final Repor [81] should be read in combina ion wi h mplemen a ion Guidelines F H & P which de ail he implemen a ion of Recommenda ion #20 This s a emen should also be read in conjunc ion wi h i s s a emen [82] of 13 June 2007 on he commi ees draf repor

NCUC cannot suppor he commi ees proposal for CANN o es ablish a broad objec ion and rejec ion process for domain names ha empowers CANN and i s "exper s" o adjudica e he legal righ s of domain name applican s (and objec ors) The proposal would also empower CANN and i s "exper s" o inven en irely new righ s o domain names ha do no exis in law and ha will compe e wi h exis ing legal righ s o domains

However "good in en ioned" he proposal would inevi ably se up a sys em ha decides legal righ s based on subjec ive beliefs of "exper panels" and he amoun of insider lobbying The proposal would give "es ablished ins i u ions" ve o power over applica ions for domain names o he de rimen of innova ors and s ar ups The proposal is fur her flawed because i makes no allowances for generic words o which no communi y claims exclusive "ownership" of ns ead i wan s o assign righ s o use language based on subjec ive s andards and will over regula e o he de rimen of compe i ion innova ion and free expression

There is no limi a ion on he ype of objec ions ha can be raised o kill a domain name no requiremen ha ac ual harm be shown o deny an applica ion and no recourse for he wrongful denial of legal righ s by CANN and i s exper s under his proposal An applican mus be able o appeal decisions of CANN and i s exper s o cour s who have more compe ence and au hori y o decide he applican s legal righ s Legal due process requires main aining a righ o appeal these decisions o real cour s

The proposal is hopelessly lawed and will resul in he improper rejec ion of many legi ima e domain names The reasons permi ed o objec o a domain are infini e in number Anyone may make an objec ion and an applica ion will au omatically be rejec ed upon a very low hreshold of "de rimen " or an even lower s andard of "a likelihood of de rimen " o anyone No a difficul bar o mee

f CANN a emp ed o pu his policy proposal in o prac ice i would in er wine i self in general policy deba es cul ural clashes business feuds religious wars and na ional poli cs among a few of he dispu es CANN would have o rule on hrough his domain name policy

The proposal opera es under false assump ions of "communi ies" ha can be de ined and ha par ies can be righ fully appoin ed represen a ives of " he communi y" by CANN The proposal gives preference o "es ablished ins i u ions" for domain names and leaves applican s wi hou he backing of "es ablished ins i u ions" wi h li le righ o a op level domain The proposal opera es o he de rimen of small scale s ar ups and innova ors who are clever enough o come up wi h an idea for a domain irs bu lack he insider connec ions and financial resources necessary o convince an CANN panel of heir wor hiness

will be excessively expensive o apply for ei her a con roversial or a popular domain name so only well financed "es ablished ins i u ions" will have bo h he s anding and financial privileges wherewi hal o be awarded a op level domain The proposal privileges who is awarded a op level domain and hus discourages diversi y of hough and he free flow of informa ion by making i more dif icul o ob ain informa ion on con roversial ideas or from innova ive new comers

Implementation Guideline F

NCUC does no agree wi h he par of mplemen a ion Guideline F ha empowers CANN iden ified "communi ies" o suppor or oppose applica ions Why should all "communi ies" agree before a domain name can be issued? How o decide who speaks for a "communi y"?

NCUC also no es ha CANN s Board of Direc ors would make he final decisions on applica ions and hus he legal righ s of applican s under proposed G F CANN Board Members are no democra ically elec ed account able o he public in any meaningful way or rained in he adjudica ion of legal righ s Final decisions regarding legal righ s should come from legi ima e law making processes such as cour s

"Exper panels" or corpora e officers are no obliga ed o respec an applican s free expression righ s and here is no recourse for a decision by he panel or CANN for righ s wrongfully denied None of he "exper " panelis s are democra ically elec ed nor account able o he public for heir decisions Ye hey will ake decisions on he boundaries be ween free expression and rademark righ s in domain names and "exper s" will decide wha ideas are oo con roversial o be permi ed in a domain name under his process

Implementation Guideline H

mplemen a ion Guideline H recommends a sys em o adjudica e legal righ s ha exis s en irely ou side of legi ima e democra ic law making processes The process se s up a sys em of unaccount able "priva e law" where "exper s" are free o pick and choose favored laws such as rademark righ s and ignore disfavored laws such as free expression guaran ees

G H opera es under he false premise ha ex ernal dispu e providers are au horized o adjudica e he legal righ s of domain name applican s and objec ors fur her presumes ha such exper panels will be qualified o adjudica e he legal righ s of applican s and o hers Bu under aking he crea ion of an en irely new in erna ional dispu e resolu ion process for he adjudica ion of legal righ s and he crea ion of new righ s is no some hing ha can be delega ed o a eam of exper s Exis ing in erna ional law ha akes in o account conflic of laws choice of laws jurisdic ion s anding and due process mus be par of any legi ima e process and he applican s legal righ s including freedom of expression righ s mus be respec ed in he process

Implementation Guideline P

"The devil is in he de ails" of mplemen a ion Guideline P as i describes in grea er de ail he proposed adversarial dispu e process o adjudica e legal righ s o op level domain names in Recommenda ion #20 G P manda es he rejec ion of an applica ion if here is "subs an ial opposi ion" o i according o CANN s exper panel Bu "subs an ial" is defined in such as way so as o ac ually mean "insubs an ial" and as a resul many legi ima e domain names would be rejec ed by such an ex remely low s andard for killing an applica ion

Under G P opposi ion agains and suppor for an applica ion mus be made by an "es ablished ins i u ion" for i o coun as "significan " again favoring major indus ry players and mains ream cul ural ins i u ions over cul ural diversi y innova ive individuals small niche and medium sized nerne businesses

G P s a es ha "communi y" should be in epre ed broadly which will allow for he maximum number of objec ions o a domain

name of coun against an application includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application 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 arguing" further confirms his subjective standard by inviting objections where "the objector makes the assumption of arguing" and also where "the objector believes here 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 applications for a new gTLD registry should be evaluated against transparent and predictable criteria fully available to the applicant prior to the initiation of the process". The subjectivity and unpredictability invited in the process by Recommendation #20, 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 otherwise face "de minimis" lower 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 its 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 in effect proper rights against free expression rights in domain names. There is neither reason nor authority for CANN processes to overtake the adjudication of legal rights and invite unreasonable and illegitimate objections to domain names.

GP falsely assumes that the number of years in operation is indicative of one's right to use language privileges enjoyed over 5 years old with objection rights that will effectively veto innovative startups who cannot afford the dispute resolution process and will be forced to abandon their application to incumbents.

GP 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 "de minimis" that includes a "likelihood of de minimis" or the narrower definition of "evidence of de minimis" as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to rearranging the deck chairs on the Titanic. CANN will become bogged down with the approval of domain names either way although it is worth noting that "likelihood of de minimis" 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 GP invite a lobby fest between competing businesses in which the "hecklers veto" in a domain name policy privilege incumbents, price out of the market non-commercial applicants and give hard 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 be 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 his "free for all" objection and rejection process will further call into question CANN's legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that CANN will best serve the global public interest by resisting the empowerment of its technical mandate and meddling in international lawmaking as proposed by Rec #20 and G F G H and GP 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_x?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 Consistency	CBUC http://www.bizcons.org/
Consensus Policy	A defined term in all CANN registry contracts usually found in Article 3 (Covenants) See for example http://www.icann.org/ids/agreements/biz/registry_agm_08dec06.htm

Coun ry Code Names Suppor ing Organiza ion	ccNSO h p //ccnso icann org/
Coun ry Code Top Level Domain	ccTLD Two le er domains such as uk (Uni ed Kingdom) de (Germany) and jp (Japan) (for example) are called coun ry code op level domains (ccTLDs) and correspond o a coun ry erri ory or o her geographic loca ion The rules and policies for regis ering domain names in he ccTLDs vary significantly and ccTLD regis ries limi use of he ccTLD o ci izens of he corresponding coun ry Some CANN accredi ed regis rars provide regis ra ion services in he ccTLDs in addi ion o regis ering names in biz com info name ne and org however CANN does no speci ically accredi regis rars o provide ccTLD regis ra ion services For more informa ion regarding regis ering names in ccTLDs including a comple e da abase of designa ed ccTLDs and managers please refer o h p //www iana org/cc ld/cc ld h m
Domain Names	The erm domain name has mul iple rela ed meanings A name ha iden i es a compu er or compu ers on he nerne These names appear as a componen of a Web si es URL e g www wikipedia org This ype of domain name is also called a hos name The produc ha Domain name regis rars provide o heir cus omers These names are of en called registered domain names Names used for o her purposes in he Domain Name Sys em (DNS) for example he special name which follows he @ sign in an email address or he Top level domains like com or he names used by he Session ni ia ion Pro col (Vo P) or DomainKeys h p //en wikipedia org/wiki/Domain_names
Domain Name Sys em	The Domain Name Sys em (DNS) helps users o find heir way around he nerne Every compu er on he nerne has a unique address jus like a telephone number which is a ra her complica ed s ring of numbers is called is "P address" (P s ands for "nerne Pro col") P Addresses are hard o remember The DNS makes using he nerne easier by allowing a familiar s ring of le ers (he "domain name") o be used ins ead of he arcane P address So ins ead of yping 207 151 159 3 you can ype www in ernic ne is a "mnemonic" device ha makes addresses easier o remember
Generic Top Level Domain	gTLD Mos TLDs wi h hree or more charac ers are referred o as "generic" TLDs or "gTLDs" They can be subdivided in o wo ypes "sponsored" TLDs (sTLDs) and "unsponsored TLDs (uTLDs) as described in more de ail below n he 1980s seven gTLDs (com edu gov in mil ne and org) were crea ed Domain names may be regis ered in hree of hese (com ne and org) wi hou res ric ion he o her four have limi ed purposes n 2001 & 2002 four new unsponsored TLDs (biz info name and pro) were in roduced The o her hree new TLDs (aero coop and museum) were sponsored Generally speaking an unsponsored TLD opera es under policies es ablished by he global nerne communi y direc ly hrough he CANN process while a sponsored TLD is a specialized TLD ha has a sponsor represen ing he narrower communi y ha is mos affec ed by he TLD The sponsor hus carries ou delega ed policy formula ion responsibili ies over many ma ers concerning he TLD
Governmental Advisory Commi ee	GAC h p //gac icann org/web/index.shtml
n ellec ual Proper y Cons i uency	PC h p //www ipcons i uency org/
nerne Service & Connec ion Providers Cons i uency	SPCP
nerne ionalized Domain Names	DNs DNs are domain names represen ed by local language charac ers These domain names may con ain charac ers wi h diacri ical marks (required by many European languages) or charac ers from non La in scrip s like Arabic or Chinese
nerne ionalized Domain Names in Applica ion	DNA DNA is a pro col ha makes i possible for applica ions o handle domain names wi h non ASC charac ers DNA conver s domain names wi h non ASC charac ers o ASC labels ha he DNS can accura ely unders and These s andards are developed wi hin he ETF (h p //www ief org)
nerne ionalized Domain Names Labels	DN A Label The A label is wha is ransmi ed in he DNS pro col and his is he ASC compa ible ACE) form of an DN A s ring For example "xn 1lq90i" DN U Label

	<p>The U label is what should be displayed to the user and is the representation of the DN in Unicode. For example "</p> <p>LDH Label</p> <p>The LDH label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and has no trailing DN for example "icann" in the domain name "icann.org"</p>
Internationalized Domain Names Working Group	<p>DN WG</p> <p>http://forum.icann.org/lis s/gns0 idn wg/</p>
Letter-Digit Hyphen	<p>LDH</p> <p>The hostname convention used by domain names before internationalization. This means 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 DNS, this rule is no longer relevant for all domain names.</p> <p>The LDH label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and has no trailing DN for example "icann" in the domain name "icann.org"</p>
Nominating Committee	<p>NomCom</p> <p>http://nomcom.icann.org/</p>
Non-Commercial Users Consistency	<p>NCUC</p> <p>http://www.ncdnhc.org/</p>
Policy Development Process	<p>PDP</p> <p>See http://www.icann.org/general/archive/bylaws/bylaws_28feb06.htm#AnnexA</p>
Protecting the Rights of Others Working Group	<p>PRO WG</p> <p>See the mailing list archive at http://forum.icann.org/lis s/gns0 pro wg/</p>
Punycode	<p>Punycode is the ASCII-compatible encoding algorithm described in the standard [RFC3492]. This is the method that will encode DNS in octet sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrars 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.</p>
Registrar	<p>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.</p> <p>The registrar asks registrars 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."</p>
Registrar Consistency	<p>RC</p> <p>http://www.icann.org/regis rars org/</p>
Registry	<p>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 network traffic to and from top level domains anywhere in the world. Network 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.</p>
Registry Consistency	<p>RyC</p> <p>http://www.gldregis tries org/</p>
Request for Comment	<p>RFC</p> <p>A full list of all Requests for Comments: http://www.rfc-editor.org/rfcxx00.html</p> <p>Specific references used in this report are shown in the next column.</p> <p>This document uses language for example "should", "must" and "may" consistent with RFC2119.</p> <p>http://rfc-editor.org/in no es/rfc1591-x</p> <p>http://rfc-editor.org/in no es/rfc2119-x</p> <p>http://rfc-editor.org/in no es/rfc2606-x</p>
Reserved Names Working Group	<p>RN WG</p> <p>See the mailing list archive at http://forum.icann.org/lis s/gns0 rn wg/</p>
Root server	<p>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.</p> <p>All domain names on the Internet can be regarded as ending in a full stop.</p>

	character e.g. "en.wikipedia.org" This final dot is generally implied rather than explicit as modern DNS software does not actually require having the final dot be included when a mapping translates 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) 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. These are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and 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 non-profit organization founded to develop, extend and promote use of the Unicode standard. See http://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 digitized.

Continue to Final Report: Part B

- [1] http://www.icann.org/general/archive_bylaws/bylaws_28feb06.htm#
- [2] The ICANN "community" is a complex mixture of interlocking organizations and which are represented graphically here <http://www.icann.org/survey/>
- [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 and http://gnso.icann.org/drafts/PDP_Dec05_StaffMemo_19jun07.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/dns/wg-report_21mar00.htm
- [12] Found at http://www.icann.org/announcements/announcement_31aug04.htm
- [13] <http://www.registrars.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_Industry_Brief/index.html
- [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-gld-pdp-input.htm>
- [16] Found here <http://gnso.icann.org/issues/new-gtlds/new-gld-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/mailling-lists/archives/ga/msg03337.html> & earlier discussion on ANA lists <http://www.iana.org/comments/26sep1998/02oc1998/msg00016.html>. The 13 June 2002 paper regarding taxonomy for non-ASCII TLDs is also illuminating http://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 at <http://gnso.icann.org/issues/idn-ids/>
- [22] The Final Report of the RN WG is found at http://gnso.icann.org/drafts/rn-wg-fr_19mar07.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/Root_server
- [25] Ms Doria supports all of the Principles but expressed concern about Principle B by saying "While strongly supporting the introduction of DN TLDs, I am concerned that the unresolved issues with DN ccTLD equivalents may interfere with the introduction of DN 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 favoring 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] No e he upda ed recommenda ion ex sen o he g ld council lis af er he 7 June mee ing h p //forum icann org/lis s /g ld council/msg00520 h ml
- [27] Reserved word limi a ions will be included in he base con rac ha will be available o applican s prior o he s ar of he applica ion round
- [28] h p //www icann org/general/idn guidelines 22feb06 h m
- [29] The mplemen a ion Team sough advice from a number of auc ion specialis s and examined o her indus ries in which auc ions were used o make clear and binding decisions Fur her exper advice will be used in developing he implemen a ion of he applica ion process o ensure he faires and mos appropria e me hod of resolving con en ion for s rings
- [30] De ailed work is being under aken lead by he Corpora e Affairs Depar men on es ablishing a ransla ion framework for CANN documen a ion This elemen of he mplemen a ion Guidelines may be addressed separa ely
- [31] h p //gnso icann org/draf s/GNSO PDP Dec05 S affMemo 14Nov06 pdf
- [32] Consis en wi h CANN s commi men s o accoun abili y and ransparency found a h p //www icann org/announcemen s /announcemen 26jan07b h m
- [33] Found a h p //www icann org/dnso/wgc repor 21mar00 h m
- [34] The announcemen is here h p //icann org/announcemen s/announcemen 03jan06 h m and he resul s are here h p //gnso icann org/issues/new g lds/new g ld pdp inpu h m
- [35] Found here h p //gnso icann org/issues/new g lds/new g ld pdp inpu h m
- [36] Found here h p //forum icann org/lis s/g ld council/
- [37] Archived a h p //forum icann org/lis s/g ld council/
- [38] Business Cons i uency h p //forum icann org/lis s/g ld council/msg00501 h ml n ellec ual Proper y Cons i uency h p //forum icann org/lis s/g ld council/msg00514 h ml n erne Service Providers h p //forum icann org/lis s/g ld council /msg00500 h ml NCUC h p //forum icann org/lis s/g ld council/msg00530 h ml Regis ry Cons i uency h p //forum icann org /lis s/g ld council/msg00494 h ml
- [39] "My concern involves using defini ions ha rely on legal erminology es ablished for rademarks for wha believe should be a policy based on echnical cri eria
- n he firs ins ance believe ha his is essen ially a echnical issue ha should have been resolved wi h reference o ypography homologues or hographic neighbourhoood ransli era ion and o her echnically defined a ribu es of a name ha would make i unaccep able There is a large body of scien ic and echnical knowledge and descrip ion in his field ha we could have drawn on
- By using erms ha rely on he legal language of rademark law believe we have crea ed an implici redundancy be ween recommenda ions 2 and 3 e believe bo h 2 and 3 can be used o pro ec rademarks and o her in ellec ual proper y righ s and while 3 has speci ic limi a ions 2 remains open o full and varied in erpre a ion
- As we begin o consider DNs am concerned ha he in erpre a ions of confusingly similar may be used o elimina e many po en ial TLDs based on ransla ion Tha is when a ransla ion may have he same or similar meaning o an exis ing TLD ha he new name may be elimina ed because i is considered confusing o users who know bo h languages "
- [40] h p //da a iana org/TLD/ lds alpha by domain x
- [41] See sec ion 4A h p //www icann org/udrp/udrp policy 24oc 99 h m
- [42] n addi ion o he exper ise wi hin he Commi ee he NCUC provided as par of i s Cons i uency mpac S a emen exper ou side advice from Professor Chris ine Haigh Farley which said in par " A de ermina ion about whe her use of a mark by ano her is "confusingly similar" is simply a firs s ep in he analysis of infringemen As he commi ee correc ly no es accoun will be aken of visual phone ic and concep ual similari y Bu his de ermina ion does no end he analysis Del a Den al and Del a Airlines are confusingly similar bu are no like o cause confusion and herefore do no infringe n rademark law where here is confusing similari y and he mark is used on similar goods or services a likelihood of confusion will usually be found European rademark law recognizes his poin perhaps more readily ha U S rademark law As a resul some imes "confusingly similar" is used as shor hand for "likelihood of confusion" However these concep s mus remain dis inc in domain name policy where here is no oppor uni y o consider how he mark is being used "
- [43] n addi ion advice was sough from exper s wi hin WPO who con inue o provide guidance on his and o her elemen s of dispu e resolu ion procedures
- [44] Kris ina Rose e provided he reference o he *Agreement on Trade Related Aspects of Intellectual Property Rights* which is found online a h p //www w o org/english/ ra op_e/ rips_e/ _agm1_e h m
- " *Article 16Rights Conferred* 1 The owner of a regis ered rademark shall have he exclusive righ o preven all hird par ies no having he owner s consen from using in he course of rade iden ical or similar signs for goods or services which are iden ical or similar o hose in respec of which he rademark is regis ered where such use would resul in a likelihood of confusion n case of he use of an iden ical sign for iden ical goods or services a likelihood of confusion shall be presumed The righ s described above shall no prejudice any exis ing prior righ s nor shall hey affec he possibili y of Members making righ s available on he basis of use "
- [45] h p //www ohchr org/english/bodies/hrc/commen s h m
- [46] h p //gnso icann org/draf s/GNSO PRO WG inal 01Jun07 pdf
- [47] Charles Shaban provided a range of examples from Arabic speaking coun ries For example in Jordan Ar icle 7Trademarks eligible for regis ra ion are¹ A rademark shall be regis ered if i is dis inc ive as o words le ers numbers igures colors or o her signs or any combina ion hereof and visually percep ible 2 For he purposes of his Ar icle "dis inc ive" shall mean applied in a manner which secures dis inguishing he goods of he proprie or of he rademark from hose of o her persons Ar icle 8Marks which may no be regis ered as rademarks The following may no be regis ered as rademarks 10 A mark iden ical wi h one belonging o a differen proprie or which is already en ered in he regis er in respec of he same goods or class of goods for which he mark is in ended o be regis ered or so closely resembling such rademark o he exen ha i may lead o deceiving hird par ies
- 12 The rademark which is iden ical or similar o or cons i ues a ransla ion of a well known rademark for use on similar or iden ical goods o hose for which ha one is well known for and whose use would cause confusion wi h he well known mark or for use of differen goods in such a way as o prejudice he in eres s of he owner of he well known mark and leads o believing ha here is a connec ion be ween i s owner and hose goods as well as he marks which are similar or iden ical o he honorary badges flags and o her insignia as well as he names and abbrevia ions rela ing o in erna ional or regional organiza ions or hose ha offend our Arab and slamic age old values

n 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 services 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 general the importance of distinctiveness of a trademark.

Article 63 in the P Law of Egypt No 82 for the year 2002 states

"A trademark is any sign distinguishing goods whether products or services and includes particular names represented in a distinctive manner, signatures, words, letters, numerals, design symbols, signs, stamps, seals, 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 products of a particular industry, agriculture, forestry or mining, venure 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/realities/en/ip/paris/tr_docs_wo020.html 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/idnwgfr22mar07.htm>

[52] The 2003 correspondence between CANN's then General Counsel and the then GAC Chairman is also useful <http://www.icann.org/correspondence/ouonleer/armizi10feb03.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 has applied to specific product types within a specific locale in an entirely compatible with a general and global naming system."

[54] For example David Maher, Jon Bing, Steve Meali, Philip Sheppard and Michael Palage.

[55] Reserved Word has a specific meaning in the CANN context and includes, for example, the reserved word provisions in CANN's existing registry contracts. See <http://www.icann.org/registrars/agreements.htm>

[56] "Until such time as the technical work on DNABis is completed, I am concerned about establishing reserved name rules connected to DNS. My primary concern involves policy decisions made in CANN for reserved names becoming hard-coded in the DNABis 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-glds/final-report-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 contexts. 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 word-level names at the top level. ANA has based its allocation of word-level names at the top level on the SO 3166 list. There is a risk of collisions between any in-erim allocations and SO 3166 assignments which may be desired in the future.

[60] The existing gTLD registry agreements provide for a method of potential release of word character LDH names at the second level. In addition, word 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 word-level and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WPO Report's recommendation that "SO 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 minimizes the potential for confusion with the ccTLDs."

[61] Considering that the current requirements in all 16 registry agreements 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] *Interim Draft DNABis Issues* [http://www.ieff.org/interim-drafts/draft-klensin-idnabis-issues-01-x-\(J-Klensin\)-Section-3-1-1-1](http://www.ieff.org/interim-drafts/draft-klensin-idnabis-issues-01-x-(J-Klensin)-Section-3-1-1-1)

[63] Considering that the current requirements in all 16 registry agreements 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 requirements in all 16 registry agreements 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 this recommendation, the subgroup takes into consideration that justification for potential user confusion (in 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 hermeneutic. 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 is indefinitely large and has subjected the process to the consideration of all possible religious and ethical systems. CANN or the panel of reviewers will also have to decide between different sets of moral principles. For example, 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. Do not underestimate and how CANN or any expert panel will be able

o judge ha some hing should be excluded based on reasons of morali y wi hou defining a leas de fac o an CANN defini ion of morali y? And while am no a s ric cons ruc ionis and some imes allow for he broader in erpre a ion of CANN s mission do no believe i includes he defini ion of a sys em of morali y"

[68] [p //www icann org/ lds/agreemen s/nea /appendix7 h ml](http://www.icann.org/ids/agreements/nea/appendix7.html)

[69] While accep ha a prospec ive regis ry mus show adequa e opera ional capabili y crea ing a financial cri eria is of concern There may be many differen ways of sa isfyng he requiremen for opera ional capabili y and s abili y ha may no be demons rable in a inancial s a emen or radi ional business plan E g in he case of an less developed communi y he regis ry may rely on volun eer effor from knowledgeable echnical exper s

Ano her concern have wi h financial requiremen s and high applica ion fees is ha hey may ac o discourage applica ions from developing na ions or indigenou and minori y peoples ha have a differen se of financial oppor uni ies or capabili ies hen hose recognized as accep able wi hin an expensive and highly developed region such as Los Angeles or Brussels "

[70] "n general suppor he policy hough do have concerns about he implemen a ion which discuss below in rela ion o G (P)"

[71] "n general suppor he idea ha a regis ry ha is doing a good job should have he expec ancy of renewal do however believe ha a regis ry especially a regis ry wi h general marke dominance or specific or local marke dominance should be subjec o commen from he relevan user public and o evalua ion of ha public commen before renewal When performance is sa isfac ory here should an expec a ion of renewal When performance is no sa isfac ory here should be some procedure for correc ing he si ua ion before renewal "

[72] Consensus Policies has a par icular meaning wi hin he CANN environmen Refer o h [p //www icann org/general /consensus policies h m](http://www.icann.org/general/consensus-policies.htm) for he full lis of CANN s Consensus Policies

[73] [p //www icann org/general/bylaws h m#AnnexA](http://www.icann.org/general/bylaws.htm#AnnexA)

[74] [p //www icann org/regis ries/agreemen s h m](http://www.icann.org/regisries/agreements.htm)

[75] The full lis of repor s is found in he Reference sec ion a he end of he documen

[76] [p //www icann org/announcemen s/announcemen 4 07mar07 h m](http://www.icann.org/announcements/announcements-4-07mar07.htm)

[77] Found a h [p //www icann org/regis rars/ra agreemen 17may01 h m](http://www.icann.org/regisrars/ra-agreement-17may01.htm)

[78] Found a h [p //www icann org/regis rars/accredi a ion h m](http://www.icann.org/regisrars/accrediaion.htm)

[79] Tex of Recommenda ion #6 "S rings mus no be con rary o generally accep ed legal norms rela ing o morali y and public order ha are enforceable under generally accep ed and in erna ionally recognized principles of law Examples of such principles of law include bu are no limi ed o he Universal Declara ion of Human Righ s (UDHR) he n erna ional Covenan on Civil and Poli ical Righ s (CCPR) he Conven ion on he Elimina ion of all forms of Discrimina ion Agains Women (CEDAW) and he n erna ional Conven ion on he Elimina ion of All Forms of Racial Discrimina ion in ellec ual proper y rea ies adminis ered by he World n ellec ual Proper y Organisa ion (W PO) and he WTO Agreemen on Trade Rela ed Aspec s of n ellec ual Proper y Righ s (TR PS) "

[80] Ms Doria ook over from former GNSO Council Chairman (and GNSO new TLDs Commi ee Chairman) Dr Bruce Tonkin on 7 June 2007 Ms Doria s erm runs un il 31 January 2008

[81] Available a h [p //forum icann org/lis s/g ld council/pdfOQqgaRNRXf pdf](http://forum.icann.org/lis/s/g/ld-council/pdf/OQqgaRNRXf.pdf)

[82] Available a h [p //ipjus ice org/wp/2007/06/13/ncuc newg ld s m june2007/](http://ipjus.ice.org/wp/2007/06/13/ncuc-newgldsm-june2007/)

[83] This glossary has been developed over he course of he policy developmen process Refer here o CANN s glossary of erms h [p //www icann org/general/glossary h m](http://www.icann.org/general/glossary.htm) for fur her informa ion

Comments concerning the layout construction and unctinality o this site should be sent to [webmaster \[at\] gns0 icann org](mailto:webmaster@at.gns0.icann.org)

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Reference Material 10.

Internet Corporation for Assigned Names and Numbers

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Approved Board Resolutions | Singapore

2

[Español \(/es/groups/board/documents/resolutions-20jun11-es.htm\)](/es/groups/board/documents/resolutions-20jun11-es.htm)

[Français \(/fr/groups/board/documents/resolutions-20jun11-fr.htm\)](/fr/groups/board/documents/resolutions-20jun11-fr.htm)

[Русский \(/ru/groups/board/documents/resolutions-20jun11-ru.htm\)](/ru/groups/board/documents/resolutions-20jun11-ru.htm)

[中文 \(/zh/groups/board/documents/resolutions-20jun11-zh.htm\)](/zh/groups/board/documents/resolutions-20jun11-zh.htm)

[العربية \(/ar/groups/board/documents/resolutions-20jun11-ar.htm\)](/ar/groups/board/documents/resolutions-20jun11-ar.htm)

20 June 2011

1. Approval of the New gTLD (generic Top Level Domain) Program

Whereas, on 28 November 2005, the GNSO (Generic Names Supporting Organization) Council voted unanimously to initiate a policy development process on the introduction of new gTLDs.

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

Whereas, on 6 September 2007, the GNSO (Generic Names Supporting Organization) Council approved by a supermajority vote a motion supporting the 19 recommendations, as a whole, set out in the Final Report of the ICANN (Internet Corporation for Assigned Names and Numbers) Generic Names Supporting Organization on the Introduction of New Generic Top-Level Domains going forward to the ICANN (Internet Corporation for Assigned Names and Numbers) Board <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07>> <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>>.

Whereas, the Board instructed staff to review the GNSO (Generic Names Supporting Organization) 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 develop implementation plans for the GNSO (Generic Names Supporting Organization)'s policy recommendations.

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

Whereas, staff has made implementation details publicly available in the form of draft gTLD (generic Top Level Domain) 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.

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 (Governmental Advisory Committee), and the Board has directed revisions to the Applicant Guidebook to reflect such agreement.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) has consulted with the GAC (Governmental Advisory Committee) to find mutually acceptable solutions on areas where the implementation of policy is not consistent with GAC (Governmental Advisory Committee) 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.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf> (</en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>)> [PDF, 103 KB].

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers) has fulfilled the commitments detailed in the Affirmation <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> (</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> (</en/topics/new-gtlds/comments-7-en.htm>)> includes updates resulting from public comment and from recent GAC (Governmental Advisory Committee) advice.

Whereas, the draft New gTLDs Communications Plan <http://www.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf> (</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 (Internet Corporation for Assigned Names and Numbers) geographic regions.

Whereas, the Draft FY12 Operating Plan and Budget <http://www.icann.org/en/announcements/announcement-17may11-en.htm> (</en/announcements/announcement-17may11-en.htm>)> includes a New gTLD (generic Top Level Domain) 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 (generic Top Level Domain) 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 (Internet Corporation for Assigned Names and Numbers).

Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD (generic Top Level Domain) 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> (</en/topics/new-gtlds/comments-7-en.htm>)>, subject to the revisions agreed to with the GAC (Governmental Advisory Committee) on 19 June 2011, including: (a) deletion of text in Module 3 concerning GAC (Governmental Advisory Committee) 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 (Generic Names Supporting Organization) and GAC (Governmental Advisory Committee) 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> (</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 (Governmental Advisory Committee) recommendation for a fee waiver corresponding to 76 percent of the \$185,000 USD evaluation fee, (b) consideration of recommendations of the ALAC (At-Large Advisory Committee) and GNSO (Generic Names Supporting Organization) 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 (At-Large Advisory Committee), and recommendations from the GNSO (Generic Names Supporting Organization) 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 (generic Top Level Domain) 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 (generic Top Level Domain) 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 (generic Top Level Domain) application window opening on 12 January 2012 and closing on 12 April 2012, with the New gTLD (generic Top Level Domain) Communications Plan beginning immediately.

Resolved (2011.06.20.02), the Board and the GAC (Governmental Advisory Committee) have completed good faith consultations in a timely and efficient manner under the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, Article XI, Section 2.j. As the Board and the GAC (Governmental Advisory Committee) were not able to reach a mutually acceptable solution on a few remaining issues, pursuant to ICANN (Internet Corporation for Assigned Names and Numbers) 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 (Internet Corporation for Assigned Names and Numbers)'s Board and the GAC (Governmental Advisory Committee) <<http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>> [PDF, 103 KB] the reasons why the GAC (Governmental Advisory Committee) advice was not followed. The Board's statement is without prejudice to the rights or obligations of GAC (Governmental Advisory Committee) 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 (Internet Corporation for Assigned Names and Numbers) community, including the members of the GAC (Governmental Advisory Committee), for the extraordinary work it has invested in crafting the New gTLD (generic Top Level Domain) Program in furtherance of ICANN (Internet Corporation for Assigned Names and Numbers)'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 (generic Top Level Domain) Program (<<http://www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf>> [PDF, 624 KB])

[Board \(/en/groups/board\)](#)

[Meetings \(/en/groups/board/meetings\)](#)

[Documents \(/en/groups/board/documents\)](#)

[Board & Chair Self-Appraisal \(/en/groups/board/documents/appraisals\)](#)

[Board Compensation Election \(/en/groups/board/documents/ce\)](#)

[Procedure Manual \(/en/groups/board/documents/draft-procedure-manual-09oct12-en\)](#)

[Resolutions Wiki \(https://community.icann.org/display/tap/ICANN+Board+Resolutions\)](https://community.icann.org/display/tap/ICANN+Board+Resolutions)

[Statements of Interest \(/en/groups/board/documents/sois\)](#)

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[Compensation Committee \(/en/groups/board/compensation\)](#)

[Executive Committee \(/en/groups/board/executive\)](#)

[Finance Committee \(/en/groups/board/finance\)](#)

[New gTLD Program Committee \(/en/groups/board/new-gtld\)](#)

[Risk Committee \(/en/groups/board/risk\)](#)

[Structural Improvements Committee \(/en/groups/board/improvements\)](#)

[ALAC \(http://www.atlarge.icann.org\)](http://www.atlarge.icann.org)

[ASO \(http://aso.icann.org\)](http://aso.icann.org)

[ccNSO \(http://ccnso.icann.org\)](http://ccnso.icann.org)

[GAC \(http://gac.icann.org\)](http://gac.icann.org)

[GNSO \(http://gnso.icann.org\)](http://gnso.icann.org)

[IETF \(/en/groups/ietf\)](#)

[NRO \(http://www.nro.net\)](http://www.nro.net)

[NomCom \(/en/groups/nomcom\)](#)

[RSSAC \(/en/groups/rssac\)](#)

[SSAC \(/en/groups/ssac\)](#)

[Technical Liaison Group \(/en/groups/tlg\)](#)

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ALAC (<http://www.alac.icann.org>)

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GAC (<http://gac.icann.org>)

GNSO (<http://gnso.icann.org>)

RSSAC (</en/groups/rssac>)

SSAC (</en/groups/ssac>)

Community Wiki (<http://community.icann.org>)

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New gTLDs (<http://newgtlds.icann.org>)

WHOIS (<http://whois.icann.org>)

Help

(</en/help>)

Acronym Helper

Reference Material 11.

ICANN Board Rationales for the Approval of the Launch of the New gTLD Program

*Note: The Rationales are not final until approved with the minutes of the Board meeting.

Table of Contents

ICANN Board Rationales

1. Program Launch.....	4
2. Evaluation Process.....	8
3. Fees.....	16
4. Geographic Names.....	30
5. Mitigating Malicious Conduct.....	46
6. Objection Process.....	64
7. Root Zone Scaling.....	79
8. String Similarity and String Contention.....	93
9. Trademark Protection.....	107

1. ICANN Board Rationale for the Approval of the Launch of the New gTLD Program

1. ICANN Board Rationale for the Approval of the Launch of the New gTLD Program

I. WHY NEW gTLDs ARE BEING INTRODUCED

New gTLDs are being introduced because the community has asked for them. The launch of the new generic top-level domain (gTLD) program will allow for more innovation, choice and change to the Internet's addressing system, now constrained by only 22 gTLDs. In a world with over 2 billion Internet users – and growing – diversity, choice and competition are key to the continued success and reach of the global network. New gTLDs will bring new protections to consumers (as well as brand holders and others) that do not exist today in the Domain Name System (DNS). Within this safer environment, community and cultural groups are already anticipating how they can bring their groups together in new and innovative ways. Companies and consumers that do not use the Latin alphabet will be brought online in their own scripts and languages. Industries and companies will have the opportunity to explore new ways to reach customers. The years of community work in planning have produced a robust implementation plan, and it is time to see that plan through to fruition.

II. FOLLOWING ICANN'S MISSION AND COMMUNITY DEVELOPED PROCESSES

A. Introduction of new TLDs is a core part of ICANN's Mission

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, a purpose was to promote competition in the DNS marketplace, including by developing a process for the introduction of new generic top-level domains while ensuring internet security and stability. The introduction of new top-level domains into the DNS has thus been a fundamental part of ICANN's mission from its inception, and was specified in ICANN's Memorandum of Understanding and Joint Project Agreement with the U.S. Department of Commerce.¹

ICANN initially created significant competition at the registrar level, which has resulted in enormous benefits for consumers. ICANN's community and Board has now turned its attention to fostering competition in the registry market. ICANN began this process with the "proof of concept" round for the addition of a limited number of new generic Top Level Domains ("gTLDs") in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system. Follow on economic studies indicated that, while benefits accruing from innovation are difficult to predict, that the introduction of new gTLDs will bring benefits in the form of increased competition, choice and new services to Internet users. The

¹ ICANN's Bylaws articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

studies also stated that taking steps to mitigate the possibility of rights infringement and other forms of malicious conduct would result in maximum net social benefits.

B. The Community Created a Policy Relating to the Introduction of new gTLDs

After an intensive policy development process, in August 2007, the Generic Names Supporting Organization issued a lengthy report in which it recommended that ICANN expand the number of gTLDs. See <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>. Contributing to this policy work were ICANN's Governmental Advisory Committee ("GAC"), At-Large Advisory Committee ("ALAC"), County Code Names Supporting Organization ("ccNSO") and Security and Stability Advisory Committee ("SSAC"). The policy development process culminated with Board approval in June 2008. See http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171.

III. COMMUNITY INVOLEMENT WAS KEY IN IMPLEMENTATION PLANNING

Since the June 2008 decision, the community has been hard at work creating, commenting on, and refining the implementation of this policy.

Seven versions of the Applicant Guidebook have been published. Fifty-eight explanatory memoranda have been produced. There have been nearly 50 new gTLD-related public comment sessions, over these documents as well as a variety of excerpts and working group reports. Over 2,400 comments were received through those public comment fora, which have been summarized and analyzed, and considered in revisions to the new gTLD program. Over 1,350 pages of summary and analysis have been produced. The community has also participated in numerous workshops and sessions and open microphone public forums at ICANN meetings, providing additional suggestions for the improvement of the new gTLD program. ICANN has listened to all of these community comments in refining the program that is being approved today.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues. The GNSO and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The ccNSO was particularly active on issues relating to internationalized domain names (IDNs) and the treatment of geographical names in the new gTLD program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, RSSAC and SSAC provided expert analysis that there is no expected significant impact of new gTLDs on the stability and scalability of the root server system.

ALAC members served on nearly every working group and team, and actively participated in all public comment fora, giving the world's Internet users a voice in implementation discussions.

IV. CONSULTATION WITH THE GAC LEAD TO IMPROVEMENTS

Under the ICANN Bylaws, the GAC has an assurance that the Board will take GAC advice into account. The Board, through an extensive and productive consultation process with the GAC, has considered the GAC's advice on the new gTLD program and resolved nearly all of the areas where there were likely differences between the GAC advice and the Board's positions.

The ICANN Board and the GAC held a landmark face-to-face consultation on 28 February – 1 March 2011 and subsequently exchanged written comments on various aspects of the new gTLD Program. On 15 April 2011, ICANN published a revised Applicant Guidebook, taking into account many compromises with the GAC as well as additional community comment. On 20 May 2011, the GAC and the ICANN Board convened another meeting by telephone, and continued working through the remaining differences between the Board and GAC positions. See <http://www.icann.org/en/announcements/announcement-22may11-en.htm>. On 26 May 2011, the GAC provided its comments on the 15 April 2011 Applicant Guidebook, and the GAC comments were taken into consideration in the production of the 30 May 2011 Applicant Guidebook.

On 19 June 2011, the ICANN Board and GAC engaged in a further consultation over the remaining areas where the Board's approval of the launch of the new gTLD program may not be consistent with GAC advice. At the beginning of the GAC consultation process, there were 12 issues under review by the GAC and the Board, with 80 separate sub-issues. The GAC and the Board have identified mutually acceptable solutions for nearly all of these sub-issues. Despite this great progress and the good faith participation of the GAC and the Board in the consultation process, a few areas remain where the GAC and the Board were not able to reach full agreement. The reasons why these items of GAC advice were not followed are set forth in responses to the GAC such as Board responses to item of GAC Advice.

V. MAJOR IMPLEMENTATION ISSUES HAVE BEEN THOROUGHLY CONSIDERED

The launch of the new gTLDs has involved the careful consideration of many complex issues. Four overarching issues, along with several other major substantive topics have been addressed through the new gTLD implementation work. Detailed rationale papers discussing the approval of the launch of the program as it relates to nine of those topics are included here. These nine topics are:

- Evaluation Process
- Fees
- Geographic Names
- Mitigating Malicious Conduct
- Objection Process
- Root Zone Scaling
- String Similarity and String Contention
- Trademark Protection.

Detailed rationales have already been produced and approved by the Board in support of its decisions relating to two other topics, Cross Ownership, at <http://www.icann.org/en/minutes/rationale-cross-ownership-21mar11-en.pdf> and Economic Studies, at <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>, each approved on 25 January 2011.

VI. CONCLUSION

The launch of the new gTLD program is in fulfillment of a core part of ICANN's Bylaws: the introduction of competition and consumer choice in the DNS. After the ICANN community created a policy recommendation on the expansion of the number of gTLDs, the community and ICANN have worked tirelessly to form an implementation plan. The program approved for launch today is robust and will provide new protections and opportunities within the DNS.

The launch of the new gTLD program does not signal the end of ICANN's or the community's work. Rather, the launch represents the beginning of new opportunities to better shape the further introduction of new gTLDs, based upon experience. After the launch of the first round of new gTLDs, a second application window will only be opened after ICANN completes a series of assessments and refinements – again with the input of the community. The Board looks forward to the continual community input on the further evolution of this program.

The Board relied on all members of the ICANN community for the years of competent and thorough work leading up to the launch of the new gTLD program. Within the implementation phase alone, the community has devoted tens of thousands of hours to this process, and has created a program that reflects the best thought of the community. This decision represents ICANN's continued adherence to its mandate to introduce competition in the DNS, and also represents the culmination of an ICANN community policy recommendation of how this can be achieved.

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

2. ICANN Board Rationale on the Evaluation Process Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, one of the areas that required significant focus is a process that allows for the evaluation of applications for new gTLDs. The Board determined that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

Following the policy advice of the GNSO, the key goal for the evaluation process was to establish criteria that are as objective and measurable as possible. ICANN worked through the challenge of creating criteria that are measurable, meaningful (i.e., indicative of the applicant's capability and not easily manipulated), and also flexible enough to facilitate a diverse applicant pool. In the end, ICANN has implemented a global, robust, consistent and efficient process that will allow any public or private sector organization to apply to create and operate a new gTLD.

II. Brief History of ICANN's Analysis of the Evaluation Process Associated with the gTLD Program

This section sets forth a brief history of the significant actions on the subject of the evaluation process associated with the gTLD program.

- In December 2005, the GNSO commenced a policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons.

- In August of 2007, the GNSO issued its final report regarding the introduction of new gTLDs.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880
- Starting with the November 2007 Board meeting, the Board began to consider issues related to the selection procedure for new gTLDs, including the need for the process to respect the principles of fairness, transparency and non-discrimination.
- On 20 November 2007, the Board discussed the need for a detailed and robust evaluation process, to allow applicants to understand what is expected of them in the process and to provide a roadmap. The process should include discussion of technical criteria, business and financial criteria, and other specifications. ICANN proceeded to work on the first draft of the anticipated request for proposals.
<http://www.icann.org/en/minutes/minutes-18dec07.htm>
- On 23 October 2008, ICANN posted the Draft Applicant Guidebook, including an outline of the evaluation procedures (incorporating both reviews of the applied-for gTLD string and of the applicant), as well as the intended application questions and scoring criteria. These were continually revised, updated, and posted for comment through successive drafts of the Guidebook.
<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>

- Between June and September 2009, KPMG conducted a benchmarking study on ICANN’s behalf, with the objective of identifying benchmarks based on registry financial and operational data. The KPMG report on Benchmarking of Registry Operations (“KPMG Benchmarking Report”) was designed to be used as a reference point during the review of new gTLD applications.
- In February 2010, ICANN published an overview of the KPMG Benchmarking Report. This overview stated that ICANN commissioned the study to gather industry data on registry operations as part of the ongoing implementation of the evaluation criteria and procedures for the new gTLD program.
<http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf> [Rationale-all -final-20110609.doc](#)
- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board. This lays out in full the proposed approach to the evaluation of gTLD applications.

III. Analysis and Consideration of the Evaluation Process

A. Policy Development Guidance

The GNSO’s advice included the following:

- 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.
- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- Applicants must be able to demonstrate their financial and organisational operational capability.
- There must be a clear and pre-published application process using objective and measurable criteria.

B. Implementation of Policy Principles

Publication of the Applicant Guidebook has included a process flowchart which maps out the different phases an application must go through, or may encounter, during the evaluation process. There are six major components to the process: (1) Application Submission/Background Screening; (2) Initial Evaluation; (3) Extended Evaluation; (4) Dispute Resolution; (5) String Contention and (6) Transition to Delegation. All applications must pass the Initial Evaluation to be eligible for approval.

The criteria and evaluation processes used in Initial Evaluation are designed to 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. The Board determined that the process must provide for an objective evaluation framework, but also allow for adaptation according to the differing models applicants will present.

The Board set out to create an evaluation process that strikes a correct balance between establishing the business and technical competence of the applicant to operate a registry, while not asking for the detailed sort of information that a venture capitalist may request. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.

Furthermore, new registries must be added in a way that maintains DNS stability and security. Therefore, ICANN has created an evaluation process that

asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry.

After a gTLD application passes the financial and technical evaluations, the applicant will then be required to successfully complete a series of pre-delegation tests. These pre-delegation tests must be completed successfully within a specified period as a prerequisite for delegation into the root zone.

C. Public Comment

Comments from the community on successive drafts of the evaluation procedures, application questions, and scoring criteria were also considered by the Board. In particular, changes were made to provide greater clarity on the information being sought, and to more clearly distinguish between the minimum requirements and additional scoring levels.

There was feedback from some that the evaluation questions were more complicated or cumbersome than necessary, while others proposed that ICANN should set a higher bar and perform more stringent evaluation, particularly in certain areas such as security. ICANN has sought to consider and incorporate these comments in establishing a balanced approach that results in a rigorous evaluation process in line with ICANN's mission for what is to be the initial gTLD evaluation round. See <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>.

IV. The Board's Analysis of the Evaluation Process Associated with the gTLD Program

A. Who the Board Consulted Regarding the Evaluation Process

- Legal Counsel
- The GNSO stakeholder groups

- ICANN’s Governmental Advisory Committee
- The At-Large Advisory Committee
- Various consultants were engaged throughout the process to assist in developing a methodology that would meet the above goals. These included InterIsle, Deloitte, KPMG, Gilbert and Tobin, and others.
- All other Stakeholders and Community members through public comment forums and other methods of participation.

B. What Significant Non-Privileged Materials the Board Reviewed

- Public Comments;
<http://icann.org/en/topics/new-gtlds/comments-analysis-en.htm>
- Benchmarking of Registry Operations;
<http://icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf>

C. What Factors the Board Found to Be Significant

The Board considered a number of factors in its analysis of the evaluation process for the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the responsibility of ensuring that new gTLDs do not jeopardize the security or stability of the DNS;

- an established set of criteria that are as objective and measurable as possible;
- the selection of independent evaluation panels with sufficient expertise, resources and geographic diversity to review applications for the new gTLD program; and
- an evaluation and selection procedure for new gTLD registries that respects the principles of fairness, transparency and non-discrimination.

V. The Board’s Reasons for Concluding the Evaluation Process was Appropriate for the gTLD Program

- The evaluation process allows for any public or private sector organization to apply to create and operate a new gTLD. However, the process is not like simply registering or buying a second-level domain. ICANN has developed an application process designed to evaluate and select candidates capable of running a registry. Any successful applicant will need to meet the published operational and technical criteria in order to ensure a preservation of internet stability and interoperability.
- ICANN’s main goal for the evaluation process was to establish criteria that are as objective and measurable as possible while providing flexibility to address a wide range of business models. Following the policy advice, evaluating the public comments, and addressing concerns raised in discussions with the community, the Board decided on the proposed structure and procedures of the evaluation process to meet the goals established for the program.

3. ICANN Board Rationale on Fees Associated With the gTLD Program

3. ICANN Board Rationale on Fees Associated With the gTLD Program

I. Introduction

The launch of the new gTLD program is anticipated to result in improvements to consumer choice and competition in the DNS. However, there are important cost implications, both to ICANN as a corporate entity and to gTLD applicants who participate in the program. It is ICANN's policy, developed through its bottom-up, multi-stakeholder process, that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost of administering the new gTLD process. <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

On 2 October 2009, the Board defined the directive approving the community's policy recommendations for the implementation of the new gTLD policy. That policy included that the implementation program should be fully self-funding. The Board has taken great care to estimate the costs with an eye toward ICANN's previous experience in TLD rounds, the best professional advice, and a detailed and thorough review of expected program costs. The new gTLD program requires a robust evaluation process to achieve its goals. This process has identifiable costs. The new gTLD implementation should be revenue neutral and existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize the new program. See <http://icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>

II. Brief History of ICANN's Analysis of Fees Associated with the gTLD Program

This section sets forth a brief history of the significant Board consideration on the subject of fees associated with the gTLD program.

- In December 2005 – September 2007, the GNSO conducted a rigorous policy development process to determine whether (and the

circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to stimulate competition further and for numerous other reasons and that evaluation fees should remain cost neutral to ICANN. The GNSO's Implementation Guideline B stated: "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process."

- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO's policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880
- On 2 November 2007, the Board reviewed the ICANN Board or Committee Submission No. 2007-54 entitled Policy Development Process for the Delegation of New gTLDs. The submission discussed application fees and stated, "[a]pplication 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."
<http://www.icann.org/en/minutes/minutes-18dec07.htm>.
- On 23 October 2008, ICANN published the initial draft version of the gTLD Applicant Guidebook, including an evaluation fee of USD 185,000 and an annual registry fee of USD 75,000.
<http://www.icann.org/en/topics/new-gtlds/comments-en.htm>
- At the 12 February 2009 Board Meeting, the ICANN Board discussed the new version of the Applicant Guidebook ("AGB"). The Board determined that the application fee should remain at the proposed fee of USD 185,000 but the annual minimum registry fee should be

reduced to USD 25,000, with a transaction fee at 25 cents per transaction. Analysis was conducted and budgets were provided to support the USD 185,000 fee. The decrease in of the registry fee to USD 25,000 was based on a level of effort to support registries.

<http://www.icann.org/en/minutes/minutes-12feb09.htm>

- On 6 March 2009, the Board reviewed ICANN Board Submission No. 2009-03-06-05 entitled Update on new gTLDs. The submission analyzed recent public comments and detailed how ICANN incorporated those comments and changes into the fee structure. It also pointed out that the annual registry fee was reduced to a baseline of USD 25,000 plus a per transaction fee of 25 cents once the registry has registered 50,000 names. Also, the submission highlighted a refund structure for the USD 185,000 evaluation fee, with a minimum 20% refund to all unsuccessful applicants, and higher percentages to applicants who withdraw earlier in the process.
- On 25 June, ICANN Published the New gTLD Program Explanatory Memorandum – New gTLD Budget which broke down the cost components of the USD 185,000 application fee.
<http://www.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>
- On 30 May 2011, ICANN posted a new version of the Applicant Guidebook, taking into account public comment and additional comments from the GAC.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. Major Principles Considered by the Board

A. Important Financial Considerations

The ICANN Board identified several financial considerations it deemed to be important in evaluating and deciding on a fee structure for the new gTLD program. On 23 October 2008, ICANN published an explanatory memorandum

describing its cost considerations and identified three themes which shaped the fee structure: (1) care and conservatism; (2) up-front payment/incremental consideration; and (3) fee levels and accessibility. See <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

1. Care and Conservatism

ICANN coordinates unique identifiers for the Internet, and particularly important for this context, directly contracts with generic top level domain registries, and cooperates with country code registries around the world in the interest of security, resiliency and stability of the DNS. There are more than 170,000,000 second-level domain registrations that provide for a richness of communication, education and commerce, and this web is reaching ever more people around the world. ICANN's system of contracts, enforcement and fees that supports this system, particularly for the 105,000,000 registrations in gTLDs, must not be put at risk. Therefore, the new gTLD must be fully self funding.

The principle of care and conservatism means that each element of the application process must stand up to scrutiny indicating that it will yield a result consistent with the community-developed policy. A robust evaluation process, including detailed reviews of the applied-for TLD string, the applying entity, the technical and financial plans, and the proposed registry services, is in place so that the security and stability of the DNS are not jeopardized. While the Board thoughtfully considered process and cost throughout the process design, cost-minimization is not the overriding objective. Rather, process fidelity is given priority.

2. Up-Front Payment/Incremental Consideration

ICANN will collect the entire application fee at the time an application is submitted. This avoids a situation where the applicant gets part way through the application process, then may not have the resources to continue. It also assures that all costs are covered. However, if the applicant elects to withdraw its application during the process, ICANN will refund a prorated amount of the fees to the applicant.

A uniform evaluation fee for all applicants provides cost certainty with respect to ICANN fees for all applicants. Further, it ensures there is no direct cost penalty to the applicant for going through a more complex application (except, when necessary, fees paid directly to a provider). A single fee, with graduated refunds, and with provider payments (e.g. dispute resolution providers) made directly to the provider where these costs are incurred seems to offer the right balance of certainty and fairness to all applicants.

3. Fee Levels and Accessibility

Members of the GNSO community recognized that new gTLD registry applicants would likely come forward with a variety of business plans and models appropriate to their own specific communities, and there was a commitment that the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency, and non-discrimination.

Some community members expressed concern that financial requirements and fees might discourage applications from developing nations, or indigenous and minority peoples, who may have different sets of financial opportunities or capabilities relative to more highly developed regions of the world. The Board addressed these concerns with their “Application Support” program (which is discussed more in depth below).

B. Important Assumptions

In the explanatory memorandum on cost considerations published on 23 October 2008, ICANN identified the three assumptions on which it would rely in determining the fee structure for the program: (1) estimating methodology; (2) expected quantity of applications; and (3) the new gTLD program will be ongoing.

1. Estimating Methodology

Estimators for the various costs associated with the application evaluation strove to use a maximum-likelihood basis to estimate the costs. A detailed

approach was taken to get the best possible estimates. The evaluation process was divided into 6 phases, 24 major steps and 75 separate tasks. Twenty-seven separate possible outcomes were identified in the application process, probabilities were identified for reaching each of these states, and cost estimates were applied for each state. Estimates at this detailed level are likely to yield more accurate estimates than overview summary estimates.

Further, whenever possible, sensitivity analysis was applied to cost estimates. This means asking questions such as “How much would the total processing cost be if all applications went through the most complex path? Or “How much would the total processing cost be if all applications went through the simplest path?” Sensitivity analysis also helps to explore and understand the range of outcomes, and key decision points in the cost estimation mode.

2. Expected Quantity of Applications

While ICANN has asked constituents and experts, there is no sure way to estimate with certainty the number of new TLD applications that will be received. ICANN has based its estimates on an assumption of 500 applications in the first round. This volume assumption is based on several sources, including a report from a consulting economist, public estimates on the web, oral comments at public meetings and off-the-record comments by industry participants. While the volume assumption of 500 applications is consistent with many data points, there is no feasible way to make a certain prediction.

If there are substantially fewer than 500 applications, the financial risk is that ICANN would not recoup historical program development costs or fixed costs in the first round, and that higher fixed costs would drive the per unit application costs to be higher than forecast. Still, the total risk of a much smaller-than-anticipated round would be relatively low, since the number of applications would be low.

If there are substantially more than 500 applications, the risk is that application processing costs would again be higher than anticipated, as ICANN would need to bring in more outside resources to process applications in a timely

fashion, driving the variable processing costs higher. In this case, ICANN would be able to pay for these higher expected costs with greater-than-expected recovery of fixed cost components (historical program development and other fixed costs), thus at least ameliorating this element of risk.

3. The New gTLD Program Will Be Ongoing

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.

It is reasonable to expect that various fees may be lower in subsequent application rounds, as ICANN processes are honed, and uncertainty is reduced.

C. Cost Elements Determined by the Board

1. Application Fee

The Board determined the application fee to be in the amount of USD 185,000. The application fee has been segregated into three main components: (a) Development Costs, (b) Risk Costs, and (c) Application Processing (see www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf). The breakdown of each component is as follows (rounded):

Development Costs:	USD 27,000
Risk Costs:	USD 60,000
<u>Application Processing:</u>	<u>USD 98,000</u>
Application Fee:	USD 185,000

The application fee was also extrapolated and further analyzed under several assumptions including receiving 500 applications (see

www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf).

a. Development Costs

These costs have two components:

i) Development costs which are the activities necessary to progress the implementation of the gTLD policy recommendations. This includes resolving open concerns, developing and completing the AGB, managing communication with the Internet community, designing and developing the processes and systems necessary to process applications in accordance with the final Guidebook, and undertaking the activities that have been deemed high risk or would require additional time to complete.

The costs associated with the Development Phase have been funded through normal ICANN budgetary process and the associated costs have been highlighted in ICANN's annual Operating Plan and Budget Documents

ii) Deployment costs which are the incremental steps necessary to complete the implementation of the application evaluation processes and system. Such costs require timing certainty and include the global communication campaign, on-boarding of evaluation panels, hiring of additional staff, payment of certain software licenses, and so on.

b. Risk Costs

These represent harder to predict costs and cover a number of risks that could occur during the program. Examples of such costs include variations between estimates and actual costs incurred or receiving a significantly low or high number of applications. ICANN engaged outside experts to assist with developing a risk framework and determining a quantifiable figure for the program.

c. Application Processing

Application Processing represents those costs necessary to accept and process new gTLD applications, conduct contract execution activities, and conduct pre-delegation checks of approved applicants prior to delegation into the root zone. Application processing costs consist of a variable and fixed costs.

Variable costs are those that vary depending on the number of applications that require a given task to be completed. Whereas fixed costs are necessary to manage the program and are not associated with an individual application.

The application fee is payable in the form of a USD 5,000 deposit submitted at the time the user requests application slots within the TLD Application System (“TAS”), and a payment of USD 180,000 submitted with the full application. See <http://icann.org/en/topics/new-gtlds/intro-clean-12nov10-en.pdf>.

2. Annual Registry Fee

ICANN’s Board has determined to place the Annual Registry Fee at a baseline of USD 25,000 plus a variable fee based on transaction volume where the TLD exceeds a defined transaction volume.

3. 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. Any applicant that has not been successful is eligible for, at a minimum, a 20% refund of the evaluation fee if it withdraws its application.

According to the AGB, the breakdown of possible refund scenarios is as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluations 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 registered into a registry agreement with ICANN		None

4. Application Support (JAS WG Charter)

As mentioned above, some community members expressed concerned that the financial requirements and fees might discourage applications from developing nations, or indigenous or minority peoples, who may have different financial opportunities. The Board addressed these concerns with their “Application Support” program, and recognized the importance of an inclusion in the new gTLD program by resolving that stakeholders work to “develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs.” See <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#20>.

In direct response to this Board resolution, the GNSO Council proposed a Joint SO/AC Working Group (“JAS WG”), composed by members of ICANN’s Supporting Organizations (“SOs”) and Advisory Committees (“ACs”), to look into applicant support for new gTLDs. See <https://st.icann.org/so-ac-new-gtld-wg/index.cgi>.

IV. The Board’s Analysis of Fees

A. Why the Board Addressed Fees

- ICANN’s mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.
- While the primary implications of the new gTLD program relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to the ICANN corporate entity and to gTLD applicants. The Board initially determined that the application fees associated with new gTLD applications should be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.
- Both the Board and members of the community have commented on the application fee structure for the new gTLD program. From those comments the Board has determined that the new gTLD implementation should be fully self-funding and revenue neutral, and that existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.

B. Who the Board Consulted Regarding Fees

- Legal Counsel
- The GNSO
- ICANN’s Supporting Organizations

- The ALAC
- The GAC
- Other ICANN Advisory Committees
- All other Stakeholders and Community members through public comment forums and other methods of participation.

C. Public Comments Considered by the Board

Over 1200 pages of feedback, from more than 300 entities, have been received since the first Draft AGB was published. The Board has analyzed and considered these comments in the context of the GNSO policy recommendations.. The Board received many comments on the fee structure, both the annual registry fee and application evaluation fee. Regarding the annual registry fee, the Board received comments stating that the annual minimum and percentage fee for registries was perceived by some to be too high.

Furthermore, the Board incorporated many suggestions from public comments pursuant to its JAS WG Application Support Program. <http://forum.icann.org/lists/soac-newgtldapsup-wg>.

D. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of fees. The Board found the following factors to be significant:

- The principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- The addition of new gTLDs to the root in order to stimulate competition at the registry level;

- That the new gTLD implementation should be fully self funding and revenue neutral; and
- That existing ICANN activities regarding technical coordination of names, numbers, and other identifiers should not cross-subsidize the new program.
- That any revenue received in excess of costs be used in a manner consistent with community input.
- Evaluation fees will be re-evaluated after the first round and adjusted.

V. The Board's Reasons for Deciding the Proposed Fee Structure is Appropriate

While the primary implications of this new policy relate to possible improvements in choice and competition as a result of new domain names, there are also important cost implications, both to ICANN as a corporate entity and to gTLD applicants with regard to the implementation of the policy through the acceptance and processing of applications as set out in the policy adopted by the community and accepted by the Board.

After evaluating public comments, addressing initial concerns and carefully evaluating the twenty-seven separate possible outcomes that were identified in the application process, the Board decided on the proposed fee structure to ensure that the new gTLD implementation would be fully self-funding and revenue neutral.

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

4. ICANN Board Rationale on Geographic Names Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, one of the areas of interest to governments and other parties was the treatment of country/territory names and other geographic names. This area has been the subject of stakeholder input and discussion throughout the implementation process.

This memorandum focuses on the Board's consideration of the provisions for geographic names in the new gTLD program. The memorandum summarizes the Board's consideration of the issue, and the Board's rationale for implementing the new gTLD program containing the adopted measures on geographic names.

II. Brief History of ICANN's Consideration of Geographic Names Associated with The New gTLD Program

This section sets forth a brief history of significant actions on the subject of geographic names associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.
- On 28 March 2007, the GAC adopted principles to govern the introduction of new gTLDs (the "GAC Principles"). Sections 2.2 and 2.7 of the GAC Principles address geographic names issues at the top and second level.
 - 2.2 ICANN should avoid country, territory, or place names, and country, territory, or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.
 - 2.7 Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of

governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD, and b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

http://gac.icann.org/system/files/gTLD_principles_0.pdf

- On 23 May 2007, the GNSO Reserved Names Working Group issued its final report. Recommendation 20 of the report stated that: (1) there should be no geographical reserved names; and (2) governments should protect their interests in certain names by raising objections on community grounds.
<http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>
- On 8 August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 20 of the report intended to provide protections for geographical names, stating that an application for a new gTLD should 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 targeted.
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- On 26 June 2008, the Board approved the GNSO's Recommendations for the introduction of new gTLDs and directed staff to develop an implementation plan.
<http://www.icann.org/en/minutes/resolutions-26jun08.htm>
- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook ("Version 1"), which incorporated various concepts set forth in the GAC Principles. Version 1 required applications involving geographic names to be accompanied by documents of support or non-objection from the relevant government authority. Geographic names included country and territory names, sub-national names on the ISO 3166-2 list, city names (if the applicant was intending to leverage the city name), and names of continents and regions included on a UN-maintained

list. <http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

- The 24 October 2008 posting also included an explanatory memorandum on the topic of geographical names, describing the various considerations used in arriving at the proposed approach. <http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf>
- On 28 December 2008, the ccNSO commented on Version 1. The ccNSO stated that (1) the restriction of protections for country/territory names to the 6 official United Nations languages needed to be amended to translation in any language; and (2) All country names and territory names should be ccTLDs – not gTLDs and should not be allowed until the IDN ccPDP process concluded. <http://forum.icann.org/lists/gtld-evaluation/msg00015.html>
- On 12 February 2009, the Board met to discuss: (1) proposed changes to Version 1; and (2) the implementation of policy recommendations given by the GAC and GNSO. <http://www.icann.org/en/minutes/minutes-12feb09.htm>
- On 18 February 2009, ICANN published an analysis of public comments received <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>
- Also on 18 February 2009, ICANN published Version 2 of the new gTLD Applicant Guidebook (“Version 2”), which clarified the definition of geographic names set forth in Version 1. In addition, Version 2 expanded protection for country and territory names involving meaningful representations in any language, and augmented requirements for documentation of support or non-objection from relevant governments and public authorities. <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm>
- On 6 March 2009, the Board resolved that it was generally in agreement with Version 2 as it related to geographic names, but directed staff to revise the relevant portions of Version 2 to provide greater specificity on the scope of protection at the top level for the

names of countries and territories listed in the ISO 3166-1 standard. The Board also directed ICANN staff to send a letter to the GAC by 17 March 2009 identifying implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution.

<http://www.icann.org/en/minutes/resolutions-06mar09.htm>

- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins that: (1) outlined the Board's 6 March 2009 resolution; (2) stated that ICANN's treatment of geographic names provided a workable compromise between the GAC Principles and GNSO policy recommendations; and (3) sought advice to resolve implementation issues regarding the protection of geographic names at the second level. <http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>
- On 9 April 2009, the ccNSO commented on Version 2. The ccNSO reiterated that all country and territory names are ccTLDs – not gTLDs. <http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf>
- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey stating that: (1) countries should not have to use objection process and should instead wait for the IDN ccTLD PDP to delegate country names; (2) the names contained on three lists be reserved at the second level at no cost for the government; and (3) ICANN should notify registries and request the suspension of any name if the government notifies ICANN that there was a misuse of a second level domain name. <http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>
- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey. The letter that stated that: (1) the proposed changes to Version 2 in relation to geographic names at the second level were acceptable to the GNSO; and (2) the GNSO and the GAC were not in agreement with regard to other issues relating to Geographic names at the top level. <http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>

- On 31 May, 2009, ICANN published an analysis of the public comments received concerning draft version 2 of the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>
- On 26 June 2009, the Board discussed proposed changes to the geographic names section of the Applicant Guidebook. These proposed changes were intended to provide greater specificity on the scope of protection at the top level for the names of countries and territories and greater specificity in the support requirements for continent or region names. The changes also provided additional guidance to applicants for determining the relevant government or public authority for the purpose of obtaining the required documentation.
<http://www.icann.org/en/minutes/resolutions-26jun09.htm>
- On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate Thrush that stated that (1) strings that were a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space; and (2) government or public authority should be able to initiate the redelegation process in limited circumstances.
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>
- On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins, responding to GAC comments on draft version 2 of the Applicant Guidebook and describing the rationale for the proposed treatment of country names, as well as the Board's general intention to provide clear rules for applicants where possible with reference to lists.
<http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
- On 04 October 2009, ICANN published Version 3 of the new gTLD Applicant Guidebook ("Version 3").
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf>
- On 21 November 2009, ccNSO delivered a letter to the Board, raising concerns about the treatment of country and territory

names. ccNSO also submitted these comments via public comments. <http://www.icann.org/correspondence/dispain-to-dengate-thrush-21nov09-en.pdf>

- On 15 February 2010, ICANN published an analysis of the public comments received. <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>
- On 12 March 2010, the Board resolved that ICANN should consider whether the Registry Restrictions Dispute Resolution Procedure or a similar post-delegation dispute resolution procedure could be implemented for use by government supported TLD operators where the government withdraws its support of the TLD. <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- On 31 May 2010, ICANN published Version 4 of the new gTLD Applicant Guidebook (“Version 4”). Version 4 excluded country and territory names from the first gTLD application round, continuing with the existing definition of country and territory names in Version 3. <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate Thrush that stated that that Version 4 still did not take fully into consideration GAC’s concerns regarding the definition of country/territory names. <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 25 September 2010, the Board met in Trondheim, Norway and decided: (1) not to include translations of the ISO 3166-1 sub-national place names in the Applicant Guidebook, and (2) to augment the definition of Continent or UN Regions in the Applicant Guidebook to include UNESCO’s regional classification list. At the same meeting, the Board resolved that ICANN staff should determine if the directions indicated by the Board regarding geographical names and other issues are consistent with GAC comments, and recommend any appropriate further action in light of GAC’s comments. <http://icann.org/en/minutes/resolutions-25sep10-en.htm>

- On 28 October, 2010, the Board discussed the scope, timing and logistics of a consultation needed with GAC regarding remaining geographic names issues in the new gTLD program. The Board agreed that staff should provide a paper on geographic names to GAC. <http://www.icann.org/en/minutes/prelim-report-28oct10-en.htm>
- On 12 November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the “Proposed Final Guidebook”). <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- On 23 February 2011, the GAC released its Indicative Scorecard on New gTLD Outstanding Issues. This scorecard included advice from the GAC on the topics of Post-Delegation Disputes and Use of Geographic Names. http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf
- On 28 February – 1 March 2011, the Board met with GAC representatives at a meeting in Brussels to discuss the issues raised by the GAC.
- On 4 March 2011, the Board published its notes on the GAC Indicative Scorecard. The Board provided an indication of whether each component of the GAC’s advice was consistent (fully or partially) or inconsistent with the Board’s position on each of the issues. <http://gac.icann.org/system/files/2011-03-04-ICANN-Board-Notes-Actionable-GAC-Scorecard.pdf>
- On 12 April 2011, the GAC published comments on the Board’s response to the GAC Scorecard. http://gac.icann.org/system/files/20110412_GAC_comments_on_the_Board_response_to_the_GAC_scorecard_0.pdf
- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the “Discussion Draft Guidebook”). This version expanded the definition of country names to include “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” as well as providing clarification to applicants 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.

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
<http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf>
- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC. This version includes some clarifications but no significant changes from the 15 April 2011 Discussion Draft.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board’s Analysis of Geographic Names Associated with the gTLD Program

A. Brief Introduction to Geographic Names

This section sets forth an overview of the treatment of geographic names in the Applicant Guidebook.

- Section 2.2.1.4 provides the following guidance for applications involving geographic names.
 - Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names.
 - Certain types of applied-for strings are considered geographical names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities. These include:

- 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;
 - An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name;
 - 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; and
 - An application for a string which represents a continent or UN region appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.
- 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.
 - 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, under which applications may be rejected based on objections showing substantial opposition from the targeted community.
- Section 2.3.1 of the Draft Discussion Guidebook provides additional guidance:
 - If an application has been identified as a geographic name requiring government support, but 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 will have additional time to obtain and submit this information in the extended evaluation period.

B. Why the Board Addressed Geographic Names

- The treatment of geographic names in the new gTLD space was an area of significant concern to many stakeholders.
- The Board received extensive advice from the GAC regarding the protection of geographic names.
- The GNSO, in its policy development work, balanced a number of stakeholder considerations in the formation of advice on the treatment of geographic names.
- The Board recognized that government stakeholders have important interests in protecting certain geographic names.
- The Board wished to create an appropriate balance between the interests of governments in protecting certain geographic names, and the multiple uses possible for various types of names in the namespace.

C. Who the Board Consulted

- Legal Counsel
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community members through public comment forum and other methods of participation.

D. What Significant Non-Privileged Materials the Board Reviewed

- **Communications from GAC**

- On 28 March 2007, GAC adopted the GAC Principles
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- On 31 October 2007, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2007-communique-30>
- On 26 June 2008, GAC expressed concern to Board and GNSO that the GNSO proposals do not include provisions reflecting GAC Principles regarding new gTLDs
<http://www.icann.org/en/minutes/resolutions-26jun08.htm>
- On 8 September 2008, Paul Twomey participated in a conference call with the GAC to discuss treatment of GAC Principles
- On 2 October 2008, Paul Twomey delivered a letter to Janis Karklins
<http://www.icann.org/en/correspondence/twomey-to-karklins-02oct08.pdf>
- On 8 November 2008: GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2008-communique-33>
- On 4 March 2009, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2009-communique-34>
- On 17 March 2009, Paul Twomey delivered a letter to Janis Karklins
<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>
- On 24 April 2009, Janis Karklins delivered a letter to Paul Twomey
<http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf>

- On 29 May 2009, Janis Karklins delivered a letter to Paul Twomey
<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>
 - On 24 June 2009, GAC issued a communiqué
<http://gac.icann.org/communiqués/gac-2010-communique-38>
 - On 18 August 2009, Janis Karklins delivered a letter to Peter Dengate
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>
 - On 22 September 2009, Peter Dengate-Thrush delivered a letter to Janis Karklins
<http://www.icann.org/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf>
 - On 10 March 2010, Janis Karklins delivered a letter to Peter Dengate-Thrush
<http://www.icann.org/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>
 - On 23 September 2010, Heather Dryden delivered a letter to Peter Dengate-Thrush
<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 23 February 2011, the GAC delivered its Indicative Scorecard on New gTLD Outstanding Issues
http://gac.icann.org/system/files/20110223_Scorecard_GAC_outstanding_issues_20110223.pdf

- **GNSO Policy Recommendations**

- On 23 May 2007, GNSO Reserved Names Working Group issued its final report

<http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>

- On 8 August 2007, GNSO issued its final report regarding the introduction of new gTLDs
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

- **ccNSO Comments**

- On 28 December 2008, ccNSO commented on Version 1
<http://forum.icann.org/lists/gtld-evaluation/msg00015.html>
- On 9 April 2009, ccNSO commented on Version 2
<http://forum.icann.org/lists/2gtld-guide/pdfc3uGsuV7CG.pdf>
- On 6 July 2009, ccNSO commented on an excerpt from Version 3
<http://forum.icann.org/lists/e-gtld-evaluation/msg00006.html>
- On 21 November 2009, ccNSO commented on Version 3 again <http://www.icann.org/correspondence/disspain-to-dengate-thrush-21nov09-en.pdf>

- **Public Comments**

- Comments from the community
<http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>

E. What Concerns the Community Raised

- There is a need for clarification of the geographic names process in the Application Guidebook.
- The new gTLDs should respect the sensitivity regarding terms with national, cultural, geographic and religious significance.

- The enumerated grounds for objection might not provide sufficient grounds to safeguard the interest of national, local and municipal governments in the preservation of geographic names that apply to them.
- Delegation and registration of country and territory names is a matter of national sovereignty.
- There is concern over the fees involved in the dispute resolution process, particularly for governments.
- There is concern over perceived inconsistencies with the GNSO policy recommendations.

F. What Factors the Board Found to Be Significant

- The balance of retaining certainty for applicants and demonstrating flexibility in finding solutions;
- The goals of providing greater clarity for applicants and appropriate safeguards for governments and the broad community;
- The goal of providing greater protections for country and territory names, and greater specificity in the support requirements for the other geographic names;
- The goal of respecting the relevant government or public authority's sovereign rights and interests;
- The risk of causing confusion for potential applicants and others in the user community; and
- The risk of possible misuse of a country or territory name or the misappropriation of a community label.

G. The Board's Reasons For the Proposed Approach to Geographic Names

- ICANN's Core Values include introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.

- The Board has accepted GAC advice to require government approval in the case of applications for certain geographic names.
- The Board intended to create a predictable, repeatable process for the evaluation of gTLD applications. Thus, to the extent possible, geographic names are defined with respect to pre-existing lists.
- The Board recognized that the community objection process recommended by the GNSO to address misappropriation of a community label would be an additional avenue available to governments to pursue a case where a name was not protected by reference to a list. The Board discussed this topic extensively with the GAC. As a result of the consultation on this and other topics, the Applicant Guidebook was revised to incorporate an Early Warning process which governments could use to flag concerns about a gTLD application at an early stage of the process. These procedures could also help address any concerns from governments about geographic names not already protected in the process.
- The Board also confirmed that the GAC has the ability to provide GAC Advice on New gTLDs concerning any application. Thus, governments would not be required to file objections and participate in the dispute resolution process, but rather, may raise their concerns via the GAC. This process could be used, for example, for governments to object to an application for a string considered by a government to be a geographic name.
- The formal objection and dispute resolution process does remain available to governments as an additional form of protection. Limited funding support from ICANN for objection filing fees and dispute resolution costs is available to governments.
- The Board adopted GAC recommendations for protections of geographic names in second-level registrations.

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

5. ICANN Board Rationale on the Risk of Increased Malicious Conduct Associated with the New gTLD Program

I. Introduction

Through the development of the new gTLD program and the numerous opportunities for public comment and receipt of community input on the new gTLD program, one of the issues that emerged as a commonly-raised concern was the potential for an increased risk of instances of malicious conduct associated with the introduction of New gTLDs. ICANN committed to (and remains committed to) addressing this issue. The Affirmation of Commitments of the United States Department of Commerce and ICANN includes the following provision:

ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.

<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. These issues were not newly identified in the Affirmation of Commitments. From the outset, ICANN has sought to address these issues as it has prepared to implement the new gTLD program, and has mechanisms and processes designed to address this concern.

This memorandum focuses on the Board's consideration of the risk of a potential increase in malicious conduct associated with the introduction of new gTLDs. The memorandum summarizes: the Board's consideration of the issue, measures approved to mitigate instances of malicious conduct, and the Board's rationale for implementing the new gTLD program while adopting and implementing measures to mitigate that risk.

II. History of the Board's Consideration of Malicious Conduct

This section contains a brief history of significant actions taken by the ICANN Board to mitigate the potential for malicious conduct associated with the new gTLD program.

- On 26 June 2008, the Board adopted the Generic Names Supporting Organization's ("GNSO") policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt
- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including the security and stability of the Internet generally and the potential risk of malicious conduct in particular. [Rationale-all -final-20110609.doc](#)
- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including the risk of malicious conduct on the Internet.
- On 26 June 2009, the Board resolved that new gTLDs be prohibited from using Domain Name System ("DNS") redirection and synthesized DNS responses; directed ICANN staff to amend the draft Applicant Guidebook accordingly; and further directed ICANN staff to educate the community about the harms associated with DNS redirection and synthesized DNS responses and how to stop them.
See Board Resolution at <https://icann.org/en/minutes/resolutions-26jun09.htm>; see Board Meeting Transcript at <http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt>
- During its study of malicious conduct, ICANN staff solicited and received comments from multiple outside sources, including the Anti Phishing Working Group (APWG), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial and Internet security communities. These parties described several potential malicious conduct issues and encouraged ICANN to consider ways these might be addressed or mitigated in new gTLD registry agreements.
- On 1 October 2009, ICANN announced the launch of the Expedited Registry Security Request ("ERSR") process. ICANN intends that

gTLD registries will use the ERSR process for security incidents that require immediate action by the registry in order to avoid adverse effects upon DNS stability or security. The ERSR, a web-based submission procedure, reflects the result of a collaborative effort between ICANN and existing gTLD registries to develop a process for quick action in cases where gTLD registries: (1) inform ICANN of a present or imminent security threat to their TLD and/or the DNS; and (2) request a contractual waiver for actions they may take or already have taken to mitigate or eliminate the threat.

<http://www.icann.org/en/announcements/announcement-01oct09-en.htm>

- On 3 October 2009, ICANN published an Explanatory Memorandum on Mitigating Malicious Conduct, part of a series of documents published by ICANN to assist the global Internet community in understanding the development of the new gTLD program and the requirements and processes presented in the Applicant Guidebook. <https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- On 24 November 2009, ICANN announced that it was soliciting members for two new temporary expert advisory groups to study issues related to the risk of malicious conduct: (1) the establishment of a high security TLD designation; and (2) centralized zone access. <https://icann.org/en/announcements/announcement-03dec09-en.htm>
- On 3 December 2009, ICANN announced that it had formed the High Security Zone Advisory Group and the Centralized Zone File Access Advisory Group. <http://www.icann.org/en/announcements/announcement-03dec09-en.htm>
- On 22 February 2010, ICANN published papers by the High Security Zone Advisory Committee and the Central File Access Advisory Committee and solicited public comments. As the result of the latter paper, a uniform method of accessing registry data is now incorporated into the Guidebook. <http://www.icann.org/en/announcements/announcement-22feb10-en.htm>

- On 28 May 2010, ICANN published an Updated Explanatory Memorandum of Mitigating Malicious Conduct. The paper described specific malicious conduct mitigation measures that were recommended by recognized experts in this area that were subsequently incorporated into the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>
- On 16 June 2010, ICANN solicited comments on the High Security Zone Advisory Committee's Policy Development Snapshot #2.
<http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf>
- On 22 September 2010, ICANN published a Request for Information on the proposed High Security Zone program and requested that all submissions be made by 23 November 2010.
- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>
- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including discussions on background screening, orphan glue records, and the High-Security Top-Level Domain (HSTLD) concept.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.8>
- On 12 November 2010, ICANN published a second Updated Explanatory Memorandum of Mitigating Malicious Conduct.
<https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf>. This memo noted ICANN's adoption of the Zone File Access Advisory Group's [Strategy Proposal](#) for a recommendation to create a mechanism to support the centralization of access to zone-file records. This centralized approach is intended to streamline the access and approval process and standardize the format methodology for zone file consumers (e.g. anti-abuse and trademark protection organizations, researchers, academia, etc.). The Centralized Zone Data Access Provider pilot program was deployed for testing in June 2011 and a

production version program is anticipated to be deployed before any new gTLDs are delegated in the root. [Rationale-all -final-20110609.doc](#)

- On 9 December 2010, the GAC provided ICANN with a list of issues it considered to be “outstanding” and requiring further consideration, including consumer protection/the risk of malicious conduct.
http://gac.icann.org/system/files/Cartagena_Communique.pdf
- On 10 December 2010, the Board resolved that ICANN had addressed the issue of the risk of increased malicious conduct in new gTLDs by adopting and implementing various measures, including centralized zone file access. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at <https://icann.org/en/minutes/resolutions-10dec10-en.htm>; see Board Meeting Minutes at <https://icann.org/en/minutes/minutes-10dec10-en.htm>
- On 21 February 2011, ICANN published a briefing paper on issues the GAC had identified as “outstanding” in September 2010, including certain issues related to the risk of increased malicious conduct.
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>
- On 28 February 2011 and 1 March 2011, the GAC and the Board conferred about remaining outstanding issues related to the new gTLD program, including certain issues related to the risk of increased malicious conduct.
<http://www.icann.org/en/announcements/announcement-23feb11-en.htm>
- On 4 March 2011, the Board published its comments on the GAC Scorecard.
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>
- On 15 April 2011, ICANN posted a discussion draft of the Applicant Guidebook (the “Discussion Draft Guidebook”).

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- On 26 May 2011, the GAC provided comments on the 15 April 2011 Discussion Draft.
<http://gac.icann.org/system/files/GAC%20Comments%20on%20the%20new%20gTLDs%20-%2026%20May%202011.pdf>
- The GAC-Board discussions resulted in additional forms of background checks and requirements for new registries to cooperate with law enforcement.
- On 30 May 2011, ICANN posted another version of the Applicant Guidebook, taking into account public comment and the additional comment from the GAC.
<http://icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board's Analysis of the Risk of Increased Malicious Conduct Associated with the New gTLD Program

A. Why the Board is Addressing This Issue Now

- ICANN's mission statement and one of its founding principles is to promote competition. The expansion of TLDs will allow for more innovation and choice in the Internet's addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to mitigate the risk of increased malicious conduct on the Internet.
- ICANN committed to the U.S. Department of Commerce that it would address the risk of malicious conduct in new gTLDs prior to implementing the program.
- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B. Who the Board Consulted

- The GNSO
- The GAC
- The At-Large Community and ALAC

- The ICANN Implementation Recommendation Team (“IRT”)
- The Anti-Phishing Working Group
<http://www.antiphishing.org/>
- The Registry Internet Safety Group
<http://registrysafety.org/website/>
- The ICANN Security and Stability Advisory Committee
<http://www.icann.org/en/committees/security/>
- Computer Emergency Response Teams (“CERTs”)
See, e.g., <http://www.us-cert.gov/>
- The ICANN Zone File Access Advisory Group
<http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm>
- The ICANN High Security Zone TLD Advisory Group
<http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm>
- The Registration Abuse Policies Working Group
<https://st.icann.org/reg-abuse-wg/>
- The Registrar Stakeholder Group
<http://www.icannregistrars.org/>
- The Registries Stakeholder Group
<http://www.gtldregistries.org/>
- Members of the banking and financial community, including the BITS Fraud Reduction Program, the American Bankers Association, the Financial Services Information Sharing and Analysis Center (“FS-ISAC”), and the Financial Services Technology Consortium (“FSTC”)
See, e.g., www.icann.org/en/correspondence/bell-to-beckstrom-11aug09-en.pdf; and
<http://www.icann.org/en/correspondence/evanoff-to-beckstrom-13nov09-en.pdf>
- Members of the Internet security community, including the Worldwide Forum of Incident Response and Security Teams (“FIRST”), which consists of computer and network emergency response teams from 180 corporations, government bodies,

universities and other institutions spread across the Americas, Asia, Europe, and Oceania; as well as various law enforcement agencies

- Other stakeholders and members of the community
- Legal counsel

C. What Significant Non-Privileged Materials the Board Reviewed

- Reports and Comments from Committees and Stakeholders
 - Centralized Zone File Access:
 - 18 February 2010 gTLD Zone File Access in the Presence of Large Numbers of TLDs: Concept Paper <https://icann.org/en/topics/new-gtlds/zfa-concept-paper-18feb10-en.pdf>
 - 12 May 2010 gTLD Zone File Access For the Future: Strategy Proposal <http://www.icann.org/en/topics/new-gtlds/zfa-strategy-paper-12may10-en.pdf>
 - Wild Card Resource Records:
 - 10 November 2006 ICANN Security and Stability Advisory Committee Paper: Why TLDs Should Not Use Wild Card Resource Records <http://www.icann.org/en/committees/security/sac015.htm>
 - Phishing Attacks:
 - 26 May 2008 ICANN Security and Stability Advisory Committee Paper: Registrar Impersonation Phishing Attacks <http://www.atlarge.icann.org/files/atlarge/ssac-registrar-impersonation-24jun08.pdf>
 - 17 June 2009 Anti-Phishing Working Group Paper https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:

[20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20us-e%20issues%2020090617.pdf](https://www.icann.org/en/topics/new-gtlds/20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20us-e%20issues%2020090617.pdf)

- DNS Response Modification:
 - 20 June 2008 ICANN Security and Stability Advisory Committee Paper: DNS Response Modification
<https://par.icann.org/files/paris/PiscitelloNXDOMAIN.pdf>
- Centralized Malicious Conduct Point of Contact:
 - 25 February 2009 ICANN Security and Stability Advisory Committee Paper: Registrar Abuse Point of Contact
<http://www.icann.org/en/committees/security/sac038.pdf>
- High Security Zone:
 - 18 November 2009 A Model for High Security Zone Verification Program: Draft Concept Paper
<https://icann.org/en/topics/new-gtlds/high-security-zone-verification-04oct09-en.pdf>
 - 17 February 2010 High Security Zone TLD: Draft Program Development Snapshot
<https://icann.org/en/topics/new-gtlds/hstld-program-snapshot-18feb10-en.pdf>
 - 13 April 2010 High Security TLD: Draft Program Development Snapshot
https://st.icann.org/hstld-advisory/index.cgi?hstld_program_development_snapshot_1
 - 16 June 2010 High Security Zone TLD: Draft Program Development Snapshot
<http://www.icann.org/en/topics/new-gtlds/hstld-program-snapshot-2-16jun10-en.pdf>
- Redirection and Synthesized Responses:

- 10 June 2001 ICANN Security and Stability Advisory Committee Paper: Recommendation to Prohibit Use of Redirection and Synthesized Responses (*i.e.*, Wildcarding) by New TLDs
<http://www.icann.org/en/committees/security/sac041.pdf>
- Thick vs. Thin WHOIS:
 - 30 May 2009 ICANN Explanatory Memorandum on Thick vs. Thin WHOIS for New gTLDs
<http://www.icann.org/en/topics/new-gtlds/thick-thin-whois-30may09-en.pdf>
- Trademark Protection:
 - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
 - See the Board Rationale Memorandum on Trademark Protection for a more detailed summary of non-privileged materials the Board reviewed on this topic.
- Malicious Conduct Generally:
 - 15 April 2009 ICANN Plan for Enhancing Internet Security, Stability and Resiliency
<http://www.icann.org/en/topics/ssr/ssr-draft-plan-16may09-en.pdf>
 - 19 May 2009 Registry Internet Safety Group's Paper: Potential for Malicious Conduct in New TLDs
https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090519220555-0-2071/original/RISG_Statement_on_New_TLDs-20090519.pdf
 - 19 August 2009 ICANN Security and Stability Advisory Committee Paper: Measures to Protect Domain

Registration Services Against Exploitation or Misuse
<http://www.icann.org/en/committees/security/sac040.pdf>

- 3 October 2009 ICANN’s Explanatory Memorandum on Mitigating Malicious Conduct
<https://icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>
- 30 November 2009 Online Trust Alliance’s Comments on the New gTLD Program
<http://www.icann.org/en/correspondence/spiegle-to-pritz-30nov09-en.pdf>
- 28 May 2010 ICANN’s Updated Memorandum on Mitigating Malicious Conduct
<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>
- 29 May 2010 Registration Abuse Policies Working Group Final Report
<http://www.gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf>
- 13 September 2010 ICANN’s Updated Plan for Enhancing Internet Security, Stability and Resiliency
<http://icann.org/en/topics/ssr/ssr-draft-plan-fy11-13sep10-en.pdf>
- 12 November 2010 ICANN’s Second Updated Memorandum on Mitigating Malicious Conduct
<https://icann.org/en/topics/new-gtlds/explanatory-memo-mitigating-malicious-conduct-12nov10-en.pdf>
- 21 February 2011 ICANN briefing paper on issues the GAC had identified as “outstanding” in September 2010, including certain issues related to the risk of increased malicious conduct
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>

- Comments from the Community

D. What Concerns the Community Raised

- There was concern expressed that the new gTLD program will lead to an expansion of crime on the Internet, including look-alike domains, drop catching, domain tasting, domain hijacking, malware distribution, identity theft and miscellaneous deceptive practices.
- Wrongdoers may apply to operate registries.
- Wrongdoers may exploit technical weaknesses in the Internet, including automated registration services.
- End user confusion about new gTLDs may lead to increased fraud. For example, end users may be confused about TLDs whose mere names raise expectations of security.
- Certain new gTLDs may not comply with some national laws.
- There is a need for an enhanced control framework for TLDs with intrinsic potential for abuse, including those involving e-service transactions requiring a high confidence infrastructure (such as electronic financial services or electronic voting) and those involving critical assets (such as energy infrastructures or medical services).
- There is a need for better and more efficient identification of domain name resellers.
- There is a need to ensure the integrity and utility of registry information.
- The new gTLD program should safeguard the privacy of personal and confidential information.
- New gTLDs may adversely affect trademark owners.
- ICANN and others should better enforce provisions in agreements with registries and registrars.
- ICANN should impose new requirements on TLD operators.

- There is a need for systemic processes to combat abuse on the Internet.

E. What Steps the Board Resolved to Take to Mitigate Malicious Conduct

The Board believes the following measures will greatly help to mitigate the risk of increasing malicious conduct arising from new gTLDs. ICANN has incorporated the majority of these measures in the current version of the Applicant Guidebook and/or the registry agreement, and its efforts to implement the remaining measures are ongoing.

<http://www.icann.org/en/topics/new-gtlds/dag-en.htm>

- Required vetting of registry operators: The application process includes standardized, thorough background and reference checks for companies and individuals (key officers) to mitigate the risk that known felons, members of criminal organizations or those with histories of bad business operations (including cybersquatting) will become involved in registry operations or gain ownership or proxy control of registries.
- Required demonstrations of plans for Domain Name System Security Extensions (“DNSSEC”) deployment: DNSSEC is designed to protect the Internet from most attacks, including DNS cache poisoning. It is a set of extensions to the DNS which provide: (1) origin authentication of DNS data; (2) data integrity; and (3) authenticated denial of existence.
- Prohibition on wildcarding: The prohibition on wildcarding bans DNS redirection and synthesized DNS responses to reduce the risk of DNS redirection to a malicious site.
- Required removal of orphan glue records: Removal of orphan glue records destroys potential name server “safe havens” that abusers can use to support criminal domain registrations. Registry operators will be required to remove orphan glue records when presented with evidence in written form that such records are present in connection with malicious conduct.
- Mandatory thick WHOIS records: Registry Operators must maintain and provide public access to registration data using a thick WHOIS data model. Thick WHOIS will help mitigate malicious conduct and

trademark abuse by ensuring greater accessibility and improved stability of records.

- Centralization of zone file access: Central coordination of zone file data will allow the anti-abuse community to efficiently obtain updates on new domains as they are created within each zone, and to reduce the time necessary to take corrective action within TLDs experiencing malicious activity. The program is designed to reduce differences in and complexities of contractual agreements, standardize approaches and improve security and access methods.
- Mandatory documentation of registry level abuse contacts and procedures: Registry operators will provide a single abuse point of contact for all domains within the TLD who is responsible for addressing and providing timely responses to abuse complaints received from recognized parties, such as registries, registrars, law enforcement organizations and recognized members of the anti-abuse community. Registries also must provide a description of their policies to combat abuse.
- Required participation in the Expedited Registry Security Request (“ERSR”) process: ICANN developed the ERSR process in consultation with registries, registrars and security experts, based on lessons learned in responding to the Conficker worm, to provide a process for registries to inform ICANN of a present or imminent “security situation” involving a gTLD and to request a contractual waiver for actions the registry might take or has taken to mitigate or eliminate the security concerns. “Security situation” means: (1) malicious activity involving the DNS of a scale and severity that threatens the systematic security, stability and resiliency of the DNS; (2) potential or actual unauthorized disclosure, alteration, insertion or destruction of registry data, or the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards; or (3) potential or actual undesired consequences that may cause or threaten to cause a temporary or long-term failure of one or more of the critical functions of a gTLD registry as defined in ICANN’s gTLD Registry Continuity Plan.
- Framework for High Security Zones Verification: The concept of a voluntary verification program is a mechanism for TLDs that desire

to distinguish themselves as secure and trusted, by meeting additional requirements for establishing the accuracy of controls for the registry, registrar and registrant processing, as well as periodic independent audits. A draft framework was created by the HSTLD working group.. The working group’s 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.

F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of the potential for malicious conduct associated with the new gTLD program. The Board found the following factors to be significant:

- the principle that the Board should base Policy on solid factual investigation and expert analysis;
- whether new gTLDs would promote consumer welfare;
- certain measures intended to mitigate the risk of malicious conduct may raise implementation costs for new gTLD registries;
- the creation of new TLDs may provide an opportunity for ICANN to improve the quality of domain name registration and domain resolution services in a manner that limits opportunities for malicious conduct;
- most abuse takes place in larger registries because that is where abusive behavior “pays back,”; a more diverse gTLD landscape makes attacks less lucrative and effective;
- the risk of increasing exposure to litigation; and
- the lack of reported problems concerning increased criminal activity associated with ICANN’s previous introductions of new TLDs.

IV. The Board’s Reasons for Proceeding with the New gTLD Program While Implementing Measures to Mitigate the Risk of Malicious Conduct

- Modest additions to the root have demonstrated that additional TLDs can be added without adversely affecting the security and stability of the domain name system.
- ICANN’s “default” position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate. New gTLDs offer new and innovative opportunities to Internet stakeholders.
- Most abuse takes place in larger registries. A more diverse gTLD landscape makes attacks less lucrative and effective.
- New gTLD users might rely on search functions rather than typing a URL in an environment with many TLDs, lessening the effectiveness of forms of cyber-squatting.
- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.
- ICANN has worked with the community to address concerns relating to potential malicious conduct in the new gTLD space. New and ongoing work on these issues in the policy development arena may provide additional safeguards recommended as a result of the bottom-up process, and ICANN will continue to support these efforts.
- Data protection is best accomplished by data protection tools, including audits, contractual penalties such as contract termination, punitive damages, and costs of enforcement, as well as strong enforcement of rules.
- The measures adopted by ICANN, including centralized zone file access, and other mechanisms, address the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space. A combination of verified security measures and the implementation of DNSSEC will

allow users to find and use more trusted DNS environments within the TLD market.

- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

6. ICANN Board Rationale on Objection Process Associated with the New gTLD Program

I. Introduction

Recommendation 12 of the Generic Names Supporting Organization (GNSO) Final Report on the Introduction of New gTLDs (<http://gnsso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>), and approved by the Board in June 2008 (http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171) states that, “[D]ispute resolution and challenge processes must be established prior to the start of the process.” Further, Implementation Guideline H, also set forth by the GNSO, states “External dispute providers will give decisions on objections.”

Based on the GNSO Policy and implementation planning, it was determined that four of the GNSO recommendations should serve as a basis for an objection process managed by external providers. Those include the following:

- (i) Recommendation 2 “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name” (String Confusion Objection);
- (ii) 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” (Legal Rights Objection);
- (iii) Recommendation 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” (Limited Public Interest Objection); and
- (iv) 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” (Community Objection).

Thus, a process allowing third parties to object to applications for new gTLDs on each the four grounds stated above was developed.²

Subsequent to the development and refinement of the original Objection Procedures based on the GNSO recommendations and set out in Module 3 of the Applicant Guidebook (see <http://www.icann.org/en/topics/new-gtlds/objection-procedures-clean-30may11-en.pdf>) a separate process has been established for the GAC. That process is also set out in Module 3 of the Applicant Guidebook. In short, there is now a formal process for the GAC to provide advice in relation to the approval of an application.

II. History of the Development of the Objection Processes and Procedures Associated with the New gTLD Program

This section sets forth a history of significant actions taken on the subject of the objection process associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.
- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs. Recommendation 12 of the report (“Recommendation 12”) states that “[d]ispute resolution and challenge processes . . . must be established prior to the start of the process” and Implementation Guideline H states that “External dispute providers will give decisions on objections.” <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- In December 2007, ICANN posted a call for expressions of Interest from potential Dispute Resolution Service Providers (DSRP) for the new gTLD Program. <http://www.icann.org/en/announcements/announcement-21dec07.htm>

² The International Centre for Dispute Resolution (ICDR) has agreed to administer disputes brought pursuant to String Confusion Objections. The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) has agreed to administer disputes brought pursuant to Legal Rights Objections. The International Center of Expertise of the International Chamber of Commerce (ICC) has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

- Throughout 2008, external dispute resolution service providers were evaluated and selected. As noted above in footnote 1, the ICDR will administer disputes brought pursuant to String Confusion Objections, WIPO will administer disputes brought pursuant to Legal Rights Objections and the ICC will administer disputes brought pursuant to Limited Public Interest and Community Objections.
- Also throughout 2008, ICANN conducted public consultations, as well as thorough and global research to help define the standing requirements and standards to be used by dispute resolution panels to resolve the disputes on the various Objection grounds.
- In October 2008, ICANN published draft version 1 of the Applicant Guidebook, including Module 3, which laid out the Dispute Resolution Procedures. At that same time, ICANN posted a paper for community discussion entitled “Morality and Public Order Objection Considerations in New gTLDs,” which summarized the implementation work that had been accomplished in response to Recommendation 6 (now called Limited Public Interest Objection).
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf>
- In February 2009, the Board discussed who would have standing to object to an applied-for string on the basis of morality and public order. There was a sense that an objection-based dispute resolution process was the appropriate method for addressing possible disputes. There was also a sense that any injured party would have standing to object. Limiting standing to governments or other official bodies might not address the potential harm.
<http://www.icann.org/en/minutes/minutes-12feb09.htm>
- Also in February 2009, with the second draft version of the Applicant Guidebook, ICANN posted the separate “New gTLD Dispute Resolution Procedure”. <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf>
- Also in February 2009, ICANN posted a paper for community discussion entitled “Description of Independent Objector for the New gTLD Dispute Resolution Process,” which explored the potential benefits of

allowing an “Independent Objector” to object within the dispute resolution process.

<http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf>

- In May 2009, along with revised excerpts of the Applicant Guidebook, ICANN posted a paper for community discussion entitled “Standards for Morality and Public Order Research,” which summarized the research relating to the development of standards for morality and public order (now Limited Public Interest) objections.
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>
- In May 2010, ICANN posted a paper entitled “‘Quick Look’ Procedure for Morality and Public Order Objections,” which summarized a procedure requested by community members by which morality and public order objections could be dismissed if they are determined to be “manifestly unfounded and/or an abuse of the right to object.”
<http://www.icann.org/en/topics/new-gtlds/morality-public-order-quick-look-28may10-en.pdf>
- In August 2010, Heather Dryden, Chair of the GAC, delivered a letter to Peter Dengate Thrush, Chairman of the Board, requesting that the proposed procedure for morality and public order objections be replaced with an alternative mechanism.
<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>
- Also in August 2010, the Board considered Submission No. 2010-08-05-15, which discussed the feedback received by the GAC with regard to the proposed procedure for morality and public order objections.
<http://www.icann.org/en/minutes/board-briefing-materials-2-05aug10-en.pdf>
- In September 2010, the cross-stakeholder group known as the New gTLD Recommendation 6 Cross-Community Working Group (“Rec6 CWG”) published a report on the Implementation of the Recommendation (the “Rec6 CWG report”). The report provided guidance to the Board with regard to procedures for addressing culturally objectionable and/or sensitive strings, while protecting internationally recognized freedom of expression rights. This report

was posted for public comment. [See link at http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm](http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm)

- Also in September 2010, the Board met in Trondheim, Norway and stated that they would “accept the [Rec6 CWG] recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and [would] work to resolve any inconsistencies.” At the same meeting, the Board agreed that it had “ultimate responsibility for the new gTLD program ... however, [that it wished] to rely on the determination of experts on these issues.”
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm>
- In October 2010, the Board again discussed the Rec6 CWG report, indicating that several of the working group recommendations could be included in the Guidebook for public discussion and that the working group recommendations should be discussed publicly at ICANN’s upcoming meeting in Cartagena.
<http://www.icann.org/en/minutes/resolutions-28oct10-en.htm>
- In November 2010, ICANN posted the proposed final version of the Applicant Guidebook (the “Proposed Final Guidebook”), which adopted several of the recommendations set forth in the Rec6 CWG report.
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- Also in November 2010, ICANN posted an explanatory memorandum entitled “Limited Public Interest Objection,” which described the recommendations set forth in the Rec6 CWG report, ICANN’s responses to those recommendations and ICANN’s rationale for its responses.
<http://www.icann.org/en/topics/new-gtlds/explanatory-memorality-public-order-12nov10-en.pdf>
- In December 2010 in Cartagena, Columbia, the Board had two separate sessions with the Rec6 CWG to help achieve further understanding of the working group’s positions.
- On 23 February the GAC issued the “GAC indicative scorecard on new gTLD issues listed in the GAC Cartagena Communique” (“Scorecard”)

identifying the Objection Process as one of twelve areas for discussion.
<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

- On 28 February and 1 March 2011, the Board and the GAC had a two-day consultation in Brussels, Belgium to discuss the issues raised in the Scorecard, including the suggestion that the GAC should not be subject to the Objection Procedures for Limited Public Interest Objections. Instead, a process was discussed by which the GAC could provide public policy advice on individual gTLD applications directly to the Board
- On 12 April 2011, the GAC issued “GAC comments on the ICANN’s Board’s response to the GAC Scorecard” that also addressed the Objection Procedures. <http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf>
- On April 15 2011, ICANN posted the April 2011 Discussion Draft of the Applicant Guidebook, containing a new “GAC Advice” section detailing the procedure by which the GAC could provide advice to the Board concerning gTLD applications. <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-redline-15apr11-en.pdf>
- Also on 15 April 2011, ICANN posted an Explanatory Memorandum entitled ‘GAC and Government Objections; Handling of Sensitive Strings; Early Warning’ to describe details of the new procedures. <http://www.icann.org/en/topics/new-gtlds/gac-objections-sensitive-strings-15apr11-en.pdf>
- [Also on 15 April 2011, ICANN posted](http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf) “Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response” discussing its response to the GAC’s concerns on the Objection Process. <http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf>
- [On 20 May the Board and GAC had further consultations that included discussion on the Objection Process.](http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf) <http://www.icann.org/en/topics/new-gtlds/transcript-board-gac-20may11-en.pdf>

- [On 30 May, ICANN posted the current version of the Applicant Guidebook with additional refinements to the Objection Process as it relates to the GAC. http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm](http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm)
- [On 19 June 2011, the Board and the GAC had additional consultations.](#)

III. The Board’s Analysis of the Objection Process Associated with the New gTLD Program

A. Brief Introduction to the Objection Process

1. Brief Overview of the Objection Process for all except the GAC.

- The new gTLD process is an objection-based process, in which parties with standing may file with an identified independent dispute resolution provider a formal objection to an application on certain enumerated grounds (see footnote 1 for list of providers). The grounds for filing a formal objection to an application are:
 - the gTLD string is confusingly similar to an existing TLD or another applied-for gTLD string in the same round of applications (“String Confusion Objection”)
 - the gTLD string infringes the existing legal rights of the objector (“Legal Rights Objection”)
 - the gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law (“Limited Public Interest Objection”)
 - there is substantial opposition to the application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted (“Community Objection”).

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-redline-15apr11-en.pdf>

- If the objectors have standing, their objections will be considered by a panel of qualified experts, that will issue a Determination.

- Specific standards under which each of the four types of objections will be evaluated are set forth in detail in Module 3 of the current Applicant Guidebook.
- There will be objection fees (fixed for String Confusion and Community Objections and hourly for Limited Public Interest and Community Objections) that will be refundable to the prevailing party.

2. Brief Overview of the GAC Advice Process.

- 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.
- 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
- 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).

B. Why the Board Addressed the Objection Process as it has

- The GNSO Policy Recommendations called for the creation of a dispute resolution or objection process in the new gTLD program.

- The GNSO also provided implementation guidelines suggesting that external dispute resolution providers should be utilized.
- A fully established objection process, with uniform standing requirements and standards available to the dispute resolution service providers, ensures that a reasonably objective process is in place. It further ensures that experts in dispute resolution make any determinations on the disputes after considering all of the evidence.
- A fully established dispute resolution process provides parties with a cost-effective alternative to initiating action in court, if there is a valid objection.
- The GAC advised the Board that it was not amendable to utilizing the standard Objection Process established for the new gTLD program. Accordingly, the Board worked closely with the GAC to develop a mutually acceptable “objection” mechanism, in the form of GAC Advice.

C. Who the Board Consulted

- Legal Counsel
- International arbitration experts
- Judges from various international tribunals such as the International Court of Justice
- Attorneys who practice in front of international tribunals such as the International Court of Justice
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community Members

D. Significant Non-Privileged Materials the Board Reviewed

- GAC Principles Regarding New gTLDs.
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- GNSO “Final Report – Introduction of new generic top-level domains.” <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- Report on Implementation of GNSO New GTLD Recommendation #6. See link to Report from <http://www.icann.org/en/announcements/announcement-2-22sep10-en.htm>
- All materials related to the Board/GAC consultation. See <http://www.icann.org/en/topics/new-gtlds/related-en.htm>
- All relevant GAC letters and Communiqués. See <http://www.icann.org/en/correspondence/> and <http://gac.icann.org/communiqués>.
- Applicant Guidebook, related explanatory memoranda, other related documents and related comment summaries and analyses:
 - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with numerous pages of public comment summaries and analysis related to the Objection Procedures. See (i) <http://www.icann.org/en/topics/new-gtlds/comments-en.htm>; (ii) <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem>; (iii) <http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm>; (iv) <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; (v) <http://www.icann.org/en/topics/new-gtlds/gns0-consultations-reports-en.htm>; (vi) <http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>; (vii) <http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm>; (viii) <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; (ix)

<http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>; (x) <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>; (xi) <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; and (xii) <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

E. Significant Concerns the Community Raised

- What will be done if there is an application for a highly objectionable name, but there are no objectors within the process?
- There is a need for clarification on what type of string would be considered to be “contrary to generally accepted legal norms relating to morality and public order . . . recognized under international principles of law.”
- Are the standards set out for each objection appropriate?
- How will fees be determined?
- Will ICANN fund certain stakeholders’ objections?
- Should it be a dispute process rather than a mere objection process?
- Are the independent dispute resolution providers the rights ones to handle the specific objections?
- Neither Governments nor the GAC should be required to utilize the Objection Procedures.

F. Factors the Board Found to Be Significant

- The Dispute Resolution Process is designed to protect certain interests and rights, those interests identified by the GNSO in their policy recommendations that were approved by the ICANN Board.
- The Dispute Resolution Process will be more cost effective and efficient than judicial proceedings. Fees will be paid directly to the dispute resolution providers.

- The Dispute Resolution Process should be independent as possible so that the applicants, the community and ICANN have the benefit of neutral expert opinion.
- It is critical to address risk to the established processes and to ICANN by providing a path for considering controversial applications that might otherwise result in litigation or attacks to the process or to the ICANN model.
- Governments have a particular interest in having an unencumbered process to provide advice to the Board without having to utilize the formal independent objection process.

G. The Board’s Reasons for Supporting the Two-pronged Objection Process Established for the New gTLD Program

- The Dispute Resolution Process complies with the policy guidance provided by the GNSO.
- The Dispute Resolution Process provides a clear, predictable path for objections and objectors.
- The Dispute Resolution Process provides clear standards that will lead to predictable, consistent results.
- The Dispute Resolution Process provides for an independent analysis of a dispute.
- The Dispute Resolution Process provides a bright line between public comment and a formal objection process so parties understand the manner in which a challenge to a particular application should be brought (a lesson learned from previous rounds).
- The Dispute Resolution Process appropriately limits the role for the Board.
- The Dispute Resolution Process limits involvement to those who truly have a valid objection.
- The Dispute Resolution Process provides for a more efficient and cost effective approach to dispute resolution than judicial proceedings.

- The Dispute Resolution Process, which provide for an “Independent Objector” to object is an important step to achieving the goal of independence and ensuring the objectionable strings are challenged.
- The GAC Advice process provides an avenue for the GAC to provide public policy advice to the Board on individual applications in a relatively timely fashion and consistent manner.
- The GAC Advice process was developed after close consultations with the GAC and provides a prescribed manner and time frame in which the Board will be able to consider GAC advice with respect to a particular string or applicant.

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

7. ICANN Board Rationale on Root Zone Scaling in the New gTLD Program

I. Introduction

When ICANN was formed in 1998 as a not for profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, its primary purpose was to promote competition in the domain name system ("DNS") marketplace while ensuring internet security and stability. ICANN's Bylaws and other foundational documents articulate that the promotion of competition in the registration of domain names is one of ICANN's core missions. See ICANN Bylaws, Article 1, Section 2.6.

One part of this mission is fostering competition by allowing additional Top Level Domains ("TLDs") to be created. ICANN began this process with the "proof of concept" round for a limited number of new gTLDs in 2000, and then permitted a limited number of additional "sponsored" TLDs in 2004-2005. These additions to the root demonstrated that TLDs could be added without adversely affecting the security and stability of the domain name system.

After an extensive policy development process, in August 2007, the GNSO issued a lengthy report in which it recommended that ICANN permit a significant expansion in the number of new gTLDs. The report recognized that the introduction of new gTLDs would require the expansion of the top-level DNS zone in the DNS hierarchy known as the DNS root zone ("root zone"). This expansion of the root zone, along with ICANN's recent and concurrent implementation of other changes to the root of the DNS, caused some members of the community to ask ICANN to review how the expansion of the root zone could impact root zone stability. <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

Between 2004 and 2010, the root of the DNS underwent significant changes, both in content as well as support infrastructure. These changes included the addition of Internationalized Domain Names ("IDNs") to the root, the deployment of IPv6 and implementation of Domain Name System Security

Extensions (“DNSSEC”). The broad scope of these changes was unprecedented. Now with new gTLDs on the horizon, further substantive changes in the root of the DNS are expected.

In response to comments from members of the community, ICANN commissioned a number of studies to address the capacity and scaling of the root server system with the goal of ensuring the stable and secure addition of new gTLDs. The studies improved ICANN’s understanding of the scalability of the root zone as it pertains to new gTLDs, and they reinforced confidence in the technical capability and stability of the root zone at the projected expansion rates. The studies also helped to inform and improve ICANN’s approach to monitoring the scalability and stability of the root zone.

II. Brief History of ICANN’s Consideration of Root Zone Scaling Associated with the New gTLD Program

This section sets forth a brief history of significant Board actions on the subject of root zone scaling associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for numerous other reasons.
- At the 2 November 2007 ICANN Board Meeting, the Board considered the GNSO’s policy recommendation and passed a resolution requesting that ICANN staff continue working on the implementation analysis for the introduction of the new gTLD program and report back to the Board with a report on implementation issues.
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>; http://www.icann.org/minutes/resolutions-02nov06.htm#_Toc89933880

- On 6 February 2008, ICANN published a paper entitled DNS Stability: The Effect of New Generic Top Level Domains on the Internet Domain Name System which addressed TLD Strings, technical stability and the capacity of the root zone.

<http://www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf>
- On 6 February 2008, in response to ICANN’s publication of the paper entitled DNS Stability: The Effect of New Generic Top Level Domains in the Internet Domain System, the Board requested public comments and community feedback regarding technical issues relevant to the addition of new gTLDs. The Board also requested guidance on how best to facilitate transparency in implementing the recommendations of the paper.

<http://www.icann.org/en/announcements/announcement-06feb08.htm>
- In February 2009, the Board resolved that the Security and Stability Advisory Committee (“SSAC”) and the DNS Root Server System Advisory Committee (“RSSAC”) should jointly conduct a study analyzing the aggregate impact of the proposed implementation of various changes to the root zone and any potential effects on the security and stability within the DNS root server system. These changes include the still-recent addition of IPv6 access to the root servers, the planned addition of IDNs at the root level, signing the root zone with DNSSEC, and the provisioning of new country code IDN TLDs and new gTLDs.
- On 7 September 2009, the Root Zone Scaling Team (“RSST”) released its study entitled Scaling the Root.

<http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf>
- On 17 September 2009, the DNS Operations Analysis and Research Center (“DNS-OARC”) released the “L” Root Study entitled Root Zone Augmentation and Impact Analysis.

<http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>

- On 29 September 2009, the Netherlands Organization for Applied Scientific Research (“TNO”) released a report directed by the RSST to develop a quantitative model of the DNS Root Server System to analyze the impact of the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. That study is entitled Root Scaling Study: Description of the DNS Root Scaling Model. <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>
- On 14 October 2009, the Chair of the Internet Architecture Board (“IAB”), Olaf Kolkman, sent a letter to ICANN’s Board in response to the publication of the RSST Study. He stated that the report’s recommendations were accurate and that security, stability and resiliency are the most important properties of the system and they need to continue to be monitored and safeguarded by ICANN. <http://www.icann.org/en/correspondence/kolkman-to-ceo-board-14oct09-en.pdf>
- On 3 March 2010, ICANN released its Draft Delegation Rate Scenarios for New gTLDs, laying out the plan for limiting delegation rates and outlining expected demand for new gTLDs based on: (1) current participation in the new gTLD process; (2) brand and famous mark holders; and (3) regional, national and other geographic regions that are not currently participating. <http://www.icann.org/en/announcements/announcement-03mar10-en.htm>
- On 25 September 2010, the Board adopted a resolution approving a model and a rationale for the maximum rate of applications. It set the number at 1,000 applications per year. The Board noted that the initial survey of the root server operator’s ability to support growth was successful and directed ICANN staff to revisit that estimate on a regular basis. The Board directed ICANN to consult with root zone operators

to define, monitor and publish data on root zone stability.

<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3>

- On 6 October 2010, ICANN released its Delegation Rate Scenarios for New gTLDs, laying out in final form the plan for limiting delegation rates for new gTLDs.
- On 5 November 2010, the ICANN Board received a letter from the Chair of ICANN's Board Risk Committee, Bruce Tonkin, stating that the Risk Committee is seeking advice from RSSAC on the capability of the root server system to support the planned introduction of new gTLDs in 2011/2012.
<http://www.icann.org/en/correspondence/tonkin-to-murai-05nov10-en.pdf>
- On 25 November 2010, the ICANN Board received a letter from the Chair of RSSAC, Jun Murai, stating that the recent successful implementation of DNSSEC in the root zone was a good example of how to proceed with new capabilities. He further stated that in the case of the proposed gradual expansion of no more than 1,000 new gTLD entries per year for the next several years, the RSSAC expected the system to remain stable and robust.
<http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf>
- On 10 December 2010, the Board indicated that the overarching issue of root zone scaling had been addressed through expert consultation and study. The studies indicate that rate-limited addition of TLDs can be implemented without any expected impact on the stability of the root zone system. The Board also agreed to implement communications and monitoring systems to oversee the new gTLD program.
<http://www.icann.org/en/minutes/minutes-10dec10-en.htm>

III. Major Root Zone Scaling Studies Commissioned by the Board

On 3 February 2009, the ICANN Board unanimously directed the RSSAC and SSAC to jointly study “the impact to security and stability within the DNS root server system of [the IPv6, IDN TLDs, DNSSEC and new gTLDs] proposed implementations.” The Board resolution stated that the joint studies should: (1) address the implications of the initial implementation of these changes occurring during a compressed time period; (2) address the capacity and scaling of the root server system to address a wide range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes; and (3) ensure that the process for establishing the study terms, design and implementation will address technical and operational concerns regarding expanding the DNS root zone. <http://www.icann.org/en/minutes/minutes-03feb09.htm>.

In response to the Board’s 3 February 2009 Resolution, ICANN commissioned two studies. The “L” Root Study focused on the impact of the scaling of the root on one server. The RSST Study modeled the processes in the root management system and analyzed the results of scaling the system.

The studies made important observations about possible limits to the root system, including limits to the pace of scaling and limitations other than purely technical, e.g. in processing TLD applications through ICANN, NTIA and VeriSign. Neither study found meaningful technical limitations in system scaling. The RSST Study recommended ongoing system modeling and monitoring, and encouraged improved communication with ICANN staff on gTLD forecasts and plans. To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software.

A. The “L” Root Study

The DNS-OARC released the “L” Root Study on 17 September 2009. The DNS-OARC conducted the study pursuant to a contract with ICANN. The study focused specifically on the impact of adding IPv6, DNSSEC and new TLDs to a laboratory simulation of the “L” Root Server. See

<http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

The DNS-OARC performed a number of simulations and measurements with BIND and NSD server software and varying zone sizes to better understand how the new gTLD program changes may affect the performance of, and resource requirements for, the root DNS server infrastructure. The analysis looked at five key areas that would have an impact on operations: (1) zone size; (2) name server reload and restart times; (3) DNS response latency; (4) inter-nameserver bandwidth utilization; and (5) potential increases in Transmission Control Protocol usage.

The “L” Root Study concluded that at least that one root server could easily handle both the deployment of the new technologies as well as the new gTLD program.

B. The RSST Study

The RSST released their study on 7 September 2009. It undertook to determine if, how, and to what extent “scaling the root” will affect the management and operation of the root system. The RSST Study considered the “L” Root Study as part of its input and outsourced the development of a simulation of root management processes and conducted interviews with root server operators, IANA staff, VeriSign, NTIA and others. The RSST Study reviewed the impact on the root servers, and on the provisioning systems that lead up to the root zone being propagated to the root servers. See <http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

The study provided qualitative and quantitative models of the root system that show how the root zone’s different parts are related and how the root zone responds to changes in the parameters that define its environment. The RSST Study’s conclusions assume that the estimate of less than 1,000 new gTLDs being added to the root zone per year is accurate. The study also assumes that other parameters relating to the management of the DNS root will not be substantively

altered. With these assumptions in mind, the RSST Study concluded that normal operational upgrade cycles and resource allocations will be sufficient to ensure that scaling the root, both in terms of new technologies as well as new content, will have no significant impact on the stability of the root system.

The principal results of the study are qualitative and quantitative models. These models enable the static simulation of popular “what-if” scenarios—*e.g.*, “what would happen if the size of the root zone increased by three orders of magnitude (assuming that everything in the system remained as it is today)?”—but also a far more useful dynamic analysis of the way in which the system responds and adapts to changes in the DNS environment over time. The analysis allows the community to anticipate the consequences of scaling the root, identify and recognize “early warning signs” of system stress, and plan ahead for any mitigating steps that may be necessary to keep the system running smoothly if and when signs of stress appear. The RSST Study also recommended that the Board call on ICANN’s staff to take on a monitoring role in collaboration with other system partners as an element of the new gTLD program rollout.

C. The TNO Report

To follow up on the RSST Study, the TNO put together a modeling contribution in conjunction with the RSST Study to transform the information and findings in the RSST Study into a quantitative model and simulation software. The TNO Report was able to simulate several cases for the purpose of model validation and to illustrate typical use of the simulation model. More specifically, this study was directed by the RSST to apply quantitative modeling expertise to develop a quantitative model of the DNS Root Server System to analyze ways it responds to the addition of new gTLDs, IDN TLDs, IPv6 and DNSSEC. The TNO suggested that the model be fine-tuned as the new gTLD program is implemented, and that the model be used as a tool by ICANN in order to give ICANN more accurate boundaries for the scalability of the root. See <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>.

IV. The Board’s Analysis of Root Zone Scaling

A. Why the Board Commissioned Studies on Root Zone Scaling

- ICANN’s mission statement and one of its founding principles is to promote user choice and competition. ICANN has created significant competition at the registrar level that has resulted in enormous benefits for consumers. To date, ICANN has not created meaningful competition at the registry level. Based upon the report and recommendation from the GNSO to introduce new gTLDs, the Board decided to proceed with the new gTLD program.
- Both the Board and members of the community have commented that the introduction of new gTLDs would require the expansion of the root zone and could impact root zone stability. To address these comments, on 3 February 2009, the Board adopted a resolution approving the SSAC/RSSAC Stability Studies which led to the commissioning of the “L” Root Study and RSST Study.

B. Who the Board Consult Regarding Root Zone Scaling

- Legal Counsel
- The GNSO
- The GAC
- DNS-OARC
- The SSAC
- The RSSAC
- The TNO

- All other Stakeholders and Community members through public comment forum and other methods of participation.

C. What Significant Non-Privileged Materials the Board Reviewed

In evaluating the issue of root zone scaling, the ICANN Board reviewed various materials to determine the stability of the root zone: (1) Deployment Experience; (2) Studies and Models; and (3) Public Comments.

1. Deployment Experience

In order to determine the stability of the root zone with the implementation of the new gTLD program, the Board closely evaluated the impact of the significant changes that had already been implemented or were in the process of being implemented into the root zone. Since February 2008, there have been significant additions to the root zone with the adoption and implementation of IDNs, IPv6 and DNSSEC. In fact, during the period between July 2004 when the first IPv6 addresses were added to the root zone for TLD name servers, until July 2010 when the root was DNSSEC-signed and Delegation Signer Records were inserted, the root DNS service continued with no reported or publicly visible degradation of service. The Board evaluated the impact of each individual addition to the root zone to date, and determined that the addition of IPv6 to the root system, IDN TLDs and the deployment of DNSSEC had no significant harmful effects that were observed by or reported to ICANN’s Board. Below is a timeline of the various additions to the root zone since July 2004:

Date	Technology	Event
July 2004	IPv6	First IPv6 addresses added to the root zone for top-level domains (KR and JP).
November 2005	DNSSEC	First top-level domain (.SE) signed.
June 2007	DNSSEC	IANA DNSSEC-signed root test bed made available.

August 2007	IDNs	Test IDN top-level domains added to the root.
February 2008	IPv6, gTLDs	First IPv6 addresses added for root servers (A, F, J, K, L and M). A limit of a maximum of less than 1,000 new gTLDs per year is derived from estimates of gTLD processing times.
January 2010	DNSSEC	Deliberately Unvalidatable Root Zone (DURZ) published on first root server ("L").
May 2010	IDNs, DNSSEC	First production IDNs added to the root (for Egypt, Saudi Arabia and United Arab Emirates). DURZ deployed on all 13 root servers.
June 2010	DNSSEC	First DS records are published in the root zone (for .UK and .BR).
July 2010	DNSSEC	Root is DNSSEC-signed and the root trust anchor is published.

<http://icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>

The deployment of new technologies continues without any significant impact to root zone stability. Deployment of IPv6 in the root, which began in 2004, caused no significant harmful effects. Insertion of IDNs into the root in 2007 similarly was a non-event from the perspective of stability of the DNS, and deployment of DNSSEC in the root starting in January 2010 resulted in no observable or reported negative consequences. The empirical data drawn from the deployment of these new technologies can be used to validate the observations. Furthermore, the Board looked at this data, and the continued stability of the root zone throughout the implementation of these programs, as a demonstration that the introduction of the new gTLD program at the proposed max rate of 1,000 applications per year would similarly not impact the stability of the root zone.

2. Studies and Models

As previously mentioned, the ICANN Board commissioned two studies in order to analyze any impact the new gTLD program might have on the root zone. Both of these studies took a different approach to evaluate the possible impact the new gTLD program might have on root zone stability. Along with the TNO Report, the studies concluded that if the proposed new gTLD program is implemented pursuant to the adopted model of a maximum of 1,000 applications per year, the program will have no significant impact on the stability of the root system.

3. Public Comments and the Board's Response

Throughout the Board's analysis of the new gTLD program, in particular with respect to its possible impact to root zone stability, the Board considered public comments made by individuals both in public comment forums and in direct response to the release of the two root zone stability studies. The universe of comments pertaining to root zone scaling is still available. See <http://forum.icann.org/lists/scaling/index.html>.

The ICANN Board's responses to those comments made in response to the RSST Study were published for the public. See <http://icann.org/en/committees/dns-root/summary-analysis-root-scaling-study-tor-04oct09-en.pdf>.

D. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of root zone scaling. The Board found the following factors to be significant:

- the principle that the Board should base its decision on solid factual investigation and expert consultation and study;
- the addition of new gTLDs to the root in order to stimulate competition at the registry level;
- the stable and secure addition of addition of new gTLDs to the DNS;

- the continued security, stability and resiliency of the root zone; and
- the continued monitoring of the root zone system.

V. The Board’s Reasons for Concluding the Introduction of New gTLDs Will Not Harm the Root Zone

The overarching issue of root zone scaling has been addressed through conversations with the public, expert consultation and expert analysis of the impact of the new gTLD program. These studies, consultations and interactions with the community facilitated the Board’s study of the possible impacts the introduction of new gTLDs may have on root zone stability. The Board concluded that the additional gTLDs may be delegated without any significant impact on the stability of the root zone system.

The Board will continue to closely monitor the stability of the root zone and will call on its staff to take on a monitoring regime along with other system partners as an element of the new gTLD program roll-out. Furthermore, the Board will ensure that ICANN staff and system partners establish effective communication channels with root zone operators and RSSAC to ensure a timely response to any changes in the root zone environment.

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

8. ICANN Board Rationale on String Similarity and String Contention Associated with the gTLD Program

I. Introduction

Through the development of the new gTLD program, the Board has given consideration to issues of potential user confusion resulting from the delegation of many similar TLD strings, as well as to creating procedures for resolving contention cases (i.e., where there is more than one qualified applicant for a TLD).

The foundational policy guidance for the program contains the principle that strings likely to cause user confusion should be avoided. Additionally, policy guidance recommended that there should be a preference for community applications in contention situations.

This memorandum focuses on the Board's review of these issues in implementing these principles in the new gTLD program. The memorandum summarizes the Board's consideration of these issues, and the Board's rationale for implementing the new gTLD program with the provisions on string contention and string similarity.

II. Brief History of ICANN's Analysis of String Similarity and String Contention Associated With the gTLD Program

This section sets forth a brief history of significant actions on the subject of string contention associated with the new gTLD program.

- In December 2005, the GNSO commenced a rigorous policy development process to determine whether (and the circumstances under which) new gTLDs would be added. A broad consensus was achieved that new gTLDs should be added to the root in order to further stimulate competition and for other reasons.
- In February 2007, Bruce Tonkin sent an email to the GNSO Council, describing the type of contention resolution methods under discussion for the gTLD process, including self-resolution, among the parties, third-party mediation, a bidding process, auctions, and testing for community affiliations.

<http://forum.icann.org/lists/gtld-council/msg00358.html>;
<http://forum.icann.org/lists/gtld-council/msg00359.html>

- In March 2007, the Governmental Advisory Committee issued its GAC Principles regarding New gTLDs. This included: 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced.
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- In August 2007, the GNSO issued its final report regarding the introduction of new gTLDs, including Recommendation 2, which stated that “strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
- The GNSO’s Final Report also included Implementation Guideline F, which stated: 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.
- In March 2008, ICANN reported on preliminary work with SWORD to develop a potential algorithm that could help to automate the process for assessing similarity among proposed and existing TLD strings. <http://www.icann.org/en/minutes/prelim-report-27mar08.htm>
- On 26 June 2008, the Board adopted the Generic Names Supporting Organization’s (“GNSO”) policy recommendations for the introduction of new gTLDs, and directed ICANN staff to continue to develop a detailed implementation plan.
See Board Resolution at
<http://www.icann.org/en/minutes/resolutions->

[26jun08.htm# Toc76113171](#); see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt

- In August 2008, ICANN considered the use of auctions as a tie-breaking mechanism within the new gTLD process. <https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm>
- Also in August 2008, ICANN posted a paper for community discussion, entitled “The Economic Case for Auctions,” which explores the potential benefits of auctions as a tie-breaking mechanism. <https://www.icann.org/en/topics/economic-case-auctions-08aug08-en.pdf>
- Also in August 2008, ICANN considered the use of a string similarity algorithm to help automate the process for assessing similarity among the proposed and existing TLD strings. SWORD completed a beta algorithm and reviewed several test cases with ICANN staff to refine the parameters and discuss how the algorithm could be successfully integrated as a tool to help implement the GNSO's recommendation that new gTLD strings should not result in user confusion. <https://www.icann.org/en/topics/new-gtlds/program-updates-2008.htm>; <http://www.icann.org/en/announcements/announcement-08aug08-en.htm>
- In October 2008, the Board passed a resolution, authorizing the CEO, COO and/or General Counsel of ICANN to enter into an agreement for algorithm related services with SWORD. <https://www.icann.org/en/minutes/prelim-report-01oct08.htm>
- On 24 October 2008, ICANN published Version 1 of the new gTLD Applicant Guidebook (“Version 1”), as well as an explanatory memorandum, “Resolving String Contention,” <http://www.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf>, describing the reasons for the contention procedures found in the draft Guidebook. The Guidebook included a preliminary establishment of contention sets based on similarity between strings, opportunities for applicants to self-resolve such contention, a comparative evaluation process, and an objective

mechanism as a last resort.

<http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

- These procedures have been continually revised, updated, and posted for comment through successive drafts of the Guidebook. In February 2009, auctions were identified as an objective mechanism of last resort for resolving string contention, included in an updated memorandum, <http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>, and beginning in draft version 2 of the Guidebook. <http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-18feb09-en.pdf>
- Comments on successive drafts of the Guidebook expressed a desire for greater clarity around the standards to be used for comparative evaluation, including requests for examples of applications that would and would not meet the threshold. In response to these comments, ICANN developed detailed explanatory notes for each of the scoring criteria to give additional guidance to applicants. These were included beginning in draft version 3 of the Guidebook. <http://www.icann.org/en/topics/new-gtlds/draft-string-contention-clean-04oct09-en.pdf>
- In May 2010, ICANN issued draft version 4 of the Guidebook. The comparative evaluation was renamed the Community Priority Evaluation, to more accurately convey the purpose and nature of the evaluation (i.e., not comparing applicants to one another but comparing each against a common set of criteria). Version 4 also included definitions for terms used in the explanatory notes as well as clarifications and expanded guidance in several areas. <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- In June 2010, the GNSO Council and the Registries Stakeholder Group requested that exceptions be granted from findings of confusing similarity. The reason for granting an exception would be that a string pair that was found to be confusingly similar constituted a case of "non-detrimental confusion."
<http://gns0.icann.org/mailling-lists/archives/council/msg09379.html>;
<http://forum.icann.org/lists/string-similarity->

[amendment/msg00002.html](#);
<http://www.icann.org/en/minutes/board-briefing-materials-1-25sep10-en.pdf>

- In September 2010, the Board discussed the subject of string similarity and resolved to encourage policy development as needed to consider any exceptions from findings of confusing similarity.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.4>
- On 30 May 2011, ICANN posted the Applicant Guidebook for consideration by the Board.
<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board's Analysis of String Similarity and String Contention

A. Brief Introduction to String Similarity and String Contention

1. String Similarity

This section sets forth an overview of the string similarity determination:

- What is the Concern over String Similarity?
 - The Board determined that delegating highly similar TLDs in the new gTLD program created the threat of detrimental user confusion.
- How Is It Determined that String Similarity Exists?
 - The preliminary similarity review will be conducted by a panel of String Similarity Examiners, who will use the following standard to test for whether string confusion exists:

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.

- The examination will be informed by human judgment assisted by criteria and an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. <http://icann.sword-group.com/algorithm/>
- What Happens Once the Determination is Made that String Similarity Exists?
 - In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will not allow the application to be submitted.
 - An application that fails the string confusion review and is found too similar to an existing TLD string will not pass the Initial Evaluation stage of the evaluation process, and no further reviews will be available.
 - An application that passes the string similarity review in the Initial Evaluation is still subject to challenge regarding string similarity in the current application round. That process requires that a specific string similarity 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 may be claimed by an objector, visual, phonetic, and semantic similarity.
 - An application that passes the string similarity review and is not subject to a string confusion objection would proceed to the next relevant stage of the process.

2. String Contention

This section sets forth an overview of the string contention process:

- What is String Contention?
 - String contention is said to occur when the strings of two or more applications are identical or found to be so similar that delegation of both will create a threat of user confusion.
- What Components Are Involved in the String Contention Process?

- Identifying gTLD strings that are likely to deceive or cause user confusion in relation to either existing TLDs or reserved names or applied-for gTLDs; and
- Resolving the string contention.
- How is a Contention Set Identified?
 - In the initial evaluation of an applied for gTLD, a string similarity panel, using the procedures described above, will determine whether two or more applications for gTLDs are in direct string contention. The applications that are determined to be in direct string contention will be marked for later resolution of the contention and proceed to the subsequent process steps. Applications that are not part of a contention set can proceed to the next stage of the evaluation process without further action.
 - Applications are in direct string contention if their proposed strings are identical or so similar that string confusion would occur if both were to be delegated as TLDs. The determination is based on human judgment assisted by an algorithmic test performed on applications.
 - Two applications are in indirect string contention if they are both in direct string contention with a third application, but not with each other.
 - During the objection process, an applicant may file a string confusion objection to assert string confusion. If the objection is upheld by the panel adjudicating the objection, the applications will be deemed to be in a direct string contention and the relevant contention sets will be modified accordingly.
 - The final contention sets are established once the extended evaluation and objection process have been concluded, because some applications may be excluded in those steps.
- How is a Contention Set Resolved?

- Voluntary settlements or agreements can occur between applications that result in the withdrawal of one or more applications. These can occur at any stage of the process, once ICANN has posted the applications received. However, material changes to an application may require a re-evaluation.
- Community priority evaluation can be used only if at least one of the applications involved is community-based and has expressed a preference for community priority evaluation. A panel will receive and score the community-based applications against the established criteria for: (1) community establishment; (2) nexus between the proposed string and community; (3) dedicated registration policies; and (4) community endorsement. If one application is a “clear winner” (i.e., meets the community priority criteria), the application proceeds to the next step and its direct contenders are eliminated. If there is no “clear winner,” the contention set will be resolved through negotiation between the parties or auction. It may occur that more than one application meets the community priority criteria, in which case time will be allowed for resolving the remaining contention by either applicant withdrawing, otherwise an auction between those applicants will resolve the contention.
- A community application that prevails in a community priority evaluation 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. Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis.
- Auction is available as a last resort mechanism for resolving string contention when (1) contending applicants successfully complete all evaluations; (2) contending applicants elect not to use community priority evaluation, were not eligible for community priority evaluation, or

community priority evaluation did not provide a “clear winner”; and (3) contending applications have not resolved the contention among themselves.

B. Why The Board Addressed String Similarity and String Contention

- The new gTLD program will increase the number of domain names available, implying a risk that “confusingly” similar strings will appear.
- It is in the interests of consumer confidence and security to protect against the threat of user confusion and to avoid increasing opportunities for bad faith entities who wish to defraud users.
- Measures should be in place to protect internet users from the potential harm in delegating confusingly similar strings in the new gTLD program.
- The Board wants to create greater certainty in the domain name marketplace by crafting a fair and practical approach on how to identify and how best to resolve contention sets.
- The Board adopted the GNSO policy recommendations, including the implementation guideline implying that a community-based TLD application could be given a priority in cases of contention.

C. Who the Board Consulted

- Legal Counsel
- The GNSO
- The GAC
- The ALAC
- The ccNSO
- The SSAC
- All other Stakeholders and Community members through public comment forum and other methods of participation.

D. What Significant Non-Privileged Materials the Board Reviewed

- **GNSO Policy Recommendations**
 - Recommendation 2: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name
<http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
 - 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.
- **GAC Principles**
 - Recommendation 2.4: In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains, no two letter gTLDs should be introduced
http://gac.icann.org/system/files/gTLD_principles_0.pdf
- **Comments from the Community**
 - <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>

E. What Concerns the Community Raised

- There is a need for clarification on the definition of “confusing similarity.”
- There are questions about the definitions for “standard” vs. “community-based” TLD types.
- There is a need for objective procedures and criteria for the community priority evaluation.

- A special form of resolution should be considered for a contention set involving two community-based applicants of equal strength, so that such a contention set is not required to go to auction.
- There is concern over using the auction process (and the receipt of auction proceeds) as a means to resolve contention for TLDs.
- There is concern that the string similarity algorithm only accounts for visual similarity, and does not accurately gauge the human reaction of confusion.
- Proceeds from auctions may be used for the benefit of the DNS and be spent through creation of a foundation that includes oversight by the community.

F. What Factors the Board Found to Be Significant

- There should be a consistent and predictable model for the resolution of contention among applicants for gTLD strings;
- The process should be kept as straightforward as possible to avoid unnecessary risks;
- There is potential harm in confusingly similar TLD strings that extends not only to the interests of existing TLD operators, but also to Internet users; and
- The protections set forth in the current string similarity process will safeguard both user and operator interests;

IV. The Board’s Reasons for Supporting the String Contention Process Contemplated in the new gTLD Program

- The Algorithm is a tool to aid the string similarity analysis.
 - The algorithm will be a consistent and predicable tool to inform the string confusion element of the new gTLD program. The algorithm will provide guidance to applicants and evaluators;
 - The role of the algorithm is primarily indicative; it is intended to provide informational data to the panel of examiners and expedite their review.

- The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes
- Human judgment will be the determining factor in the final decisions regarding confusing similarity for all proposed strings.
- Contending applicants should be given the opportunity to settle contention among themselves – this will result in innovative and economic solutions.
- The community priority evaluation stage of the string contention process features sufficient criteria to: (a) validate the designation given to community-based applications; and (b) assess a preference for community-based applications in a contention set. Both the GNSO Final Report and GAC Principles encourage the special consideration of applications that are supported by communities.
 - <http://GNSO.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>;
 - http://gac.icann.org/system/files/gTLD_principles_0.pdf
- The GAC Principle that two-letter TLDs should not be delegated to avoid confusion with ccTLDs was adopted.
- There are advantages to an auction as a resolution mechanism of last resort.
 - It is an objective test; other means are subjective and might give unfair results, are unpredictable, and might be subject to abuses.
 - It assures the round will finish in a timely way.
 - It is thought than few auctions will actually occur. A negotiated settlement will be a lower-cost solution for the parties than an auction. The availability of auctions will encourage parties to settle. Even if there are proceeds from auctions, these will be expended in a process that includes independent oversight.
 - Ascending clock auctions typically employ an “activity rule,” where a bidder needs to have been “in” at early prices in the auction in order to continue to stay “in” at later prices. This is useful because in an ascending clock auction, bidders are

informed of the number of contending applications that have remained “in” after each round, but not their identities. With the specified activity rule, this demand information has real significance, as a competitor who has exited the auction cannot later re-enter.

- The auctioneer in ascending clock auctions has the ability to pace the speed at which prices increase. This facet has greatest importance if related items are auctioned simultaneously, as their prices can then be paced to increase together in relation to the level of demand. This has the advantage of providing bidders with information about the level of demand for other new gTLDs—and hence the value of a new gTLD—while the auction is still in progress.

9. ICANN Board Rationale On Trademark Protection in the New gTLD Program

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I. Introduction

One of ICANN’s core values is “[i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.” <http://www.icann.org/en/general/bylaws.htm>. In furtherance of this core value, ICANN is committed to ensuring that the concerns of all community members, including trademark holders, are considered and addressed to the extent practicable before launching the new generic top level domain (“gTLD”) program.

ICANN has long recognized the importance of ensuring that the introduction of new gTLDs is conducted consistently with the protection of the rights of trademark holders, communities and other rights holders from abusive registration and infringement. In each previous expansion to the domain name system (“DNS”), the protection of legal rights of third parties was a feature of the application and evaluation process. For the new gTLD Program, ICANN has sought input from numerous stakeholders, including trademark holders, trademark lawyers, businesses, other constituencies and governments, to devise a multi-layered approach to protecting the rights of third parties. The approach includes a pre-delegation dispute resolution process for protecting existing legal rights at the top level. Also included in this approach are numerous rights protection mechanisms at the second level such as: (i) the establishment of a trademark clearinghouse to support both sunrise and trademark claims processes, a trademark post-delegation dispute resolution procedure (PDDRP), the Uniform Rapid Suspension System (URS) and the requirement for registries to maintain a thick Whois database. Of course, also available to all is the existing, long-standing and tested Uniform Domain Name Dispute Resolution Policy (UDRP).

II. History of the Board's Consideration of Trademark Protection

This section contains a brief history of significant actions taken to address trademark protection in the new gTLD program.

- On 1 February 2007, the Generic Names Supporting Organization (“GNSO”) Council approved a request to form a Working Group on

Protecting the Rights of Others.

<http://gns0.icann.org/meetings/minutes-gns0-01feb07.html>

- On 15 March 2007, the GNSO Council ratified a Statement of Work for the newly-formed GNSO Working Group on Protecting the Rights of Others. <http://gns0.icann.org/meetings/minutes-gns0-15mar07.html>
- On 26 June 2007, the GNSO Working Group on Protecting the Rights of Others published its Final Report. gns0.icann.org/drafts/pro-wg-final-report-26jun07.pdf
- On 8 August 2008, the GNSO issues its “Final Report – Introduction of New Generic Top-Level Domains,” including a recommendation that “Strings must not infringe the existing legal rights of others”. <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>
- On 21 December 2007, ICANN requested “expressions of interest from potential dispute resolution service providers for the new gTLD program.” <http://www.icann.org/en/topics/drsp-call-for-expressions-of-interest.pdf>
- On 26 June 2008, the Board adopted the GNSO’s Policy recommendations for the introduction of new gTLDs. See Board Resolution at http://www.icann.org/en/minutes/resolutions-26jun08.htm#_Toc76113171; see Board Meeting Transcript at https://par.icann.org/files/paris/ParisBoardMeeting_26June08.txt
- On 22 October 2008, ICANN published an Explanatory Memorandum on Protection of Rights of Others in New gTLDs and solicited comments. <http://www.icann.org/en/topics/new-gtlds/protection-rights-22oct08-en.pdf>
- After receiving significant community input, on 6 March 2009, the Board recognized trademark protection in the new gTLD program as an issue requiring additional input and analysis, the resolution of which would benefit the new gTLD program. The Board requested that the GNSO’s Intellectual Property Constituency convene an Implementation Recommendation Team (“IRT”) to solicit input,

analyze the issue, and prepare draft and final reports.

<http://www.icann.org/en/minutes/resolutions-06mar09.htm#07>

- On 24 April 2009, the IRT published its Preliminary Report for public comment.
<http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf>; see public comments at <http://forum.icann.org/lists/irt-draft-report/>
- On 16 May 2009, the Board participated in a workshop on issues related to the new gTLD program, including trademark protections in particular.
- On 29 May 2009, the IRT published its Final Report and an “Open Letter from the IRT Introducing our Work.” ICANN and the IRT recognized that a significant intersection exists in between strategies to facilitate trademark protection and strategies to mitigate the risk of increased malicious conduct on the Internet.
<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
- On 20 June 2009, the Board participated in another workshop on issues related to the new gTLD program, including trademark protection.
- On 21 June 2009, the IRT presented its Final Report to the ICANN Board at the ICANN Sydney Open Meeting and provided briefings to the GNSO, interested constituencies and others.
<http://syd.icann.org/full-sched>
- On 26 June 2009, the Board acknowledged and thanked the IRT for its “intensive engagement” and its “detailed and articulate proposals.”
<http://www.icann.org/en/minutes/resolutions-26jun09.htm>
- Also on 26 June 2009, the Board acknowledged that ICANN staff had posted material on the new Draft Applicant Guidebook for public comment; thanked the community; and requested that all further comments be submitted by the close of the comment period on 20 July 2009. The Board also requested that the ICANN staff prepare a comprehensive set of implementation documents before the Board’s meeting on 30 October 2009. See Board

Resolution at <https://icann.org/en/minutes/resolutions-26jun09.htm>; see Board Meeting Transcript at <http://syd.icann.org/files/meetings/sydney2009/transcript-board-meeting-26jun09-en.txt>

- On 12 September 2009, the Board continued its discussion about trademark protection in new gTLDs at a Board Retreat.
- On 12 October 2009, the Board sent a letter to the GNSO, requesting that it review trademark protection policy for the new gTLD program as described in the Draft Applicant Guidebook and accompanying memoranda, including the proposals for a Trademark Clearinghouse and a Uniform Rapid Suspension System. <http://www.gnso.icann.org/correspondence/beckstrom-to-gnso-council-12oct09-en.pdf>
- On 28 October 2009, the GNSO adopted a resolution creating the Special Trademarks Issues review team (“STI”), which included representatives from each stakeholder group, the At-Large community, nominating committee appointees, and the Governmental Advisory Committee (“GAC”). <http://gnso.icann.org/resolutions/#200910>
- On 30 October 2009, the Board issued a resolution encouraging additional comments on the Draft Applicant Guidebook and new gTLD program. See Board Resolution at <https://icann.org/en/minutes/resolutions-30oct09-en.htm>; see Board Meeting Transcript at <https://icann.org/en/minutes/index-2009.htm>
- On 11 December 2009, the STI published its Report. See link to Report in <http://gnso.icann.org/resolutions/#200912>
- On 18 December 2009, the GNSO unanimously approved the recommendations contained in the STI’s report. <http://gnso.icann.org/resolutions/#200912>
- On 15 February 2010, ICANN published for public comment proposals for trademark protection in the new gTLD program, including the Trademark Clearinghouse, a Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.

<http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>

- On 10 March 2010, the GAC outlined to the Board some concerns and recommendations for the new gTLD program and its comments on version 3 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-10mar10-en.pdf>
- On 12 March 2010, the Board acknowledged the community recommendations for trademark protections in the new gTLD program, including the development of a Trademark Clearinghouse and a Uniform Rapid Suspension System; resolved that the proposals for both be incorporated into version 4 of the Draft Applicant Guidebook; and directed ICANN staff to review any additional comments and develop final versions of the proposals for inclusion in the Draft Applicant Guidebook.
<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- Also on 12 March 2010, the Board approved the concept of a post-delegation dispute resolution procedure; and directed ICANN staff to review any additional comments and synthesize them, as appropriate, into a final draft procedure, and include the procedure in version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm>
- On 28 May 2010, in response to further comments from the community, ICANN published for public comment revised proposals for the Trademark Clearinghouse, Uniform Rapid Suspension System, and a post-delegation dispute resolution procedure.
<http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>
- On 5 August 2010, the Board responded to the GAC's comments on version 3 of the Draft Applicant Guidebook and described the steps it took to protect trademarks in version 4 of the Draft Applicant Guidebook.
<http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf>
- On 23 September 2010, the GAC outlined to the Board its concerns and recommendations for the new gTLD program and its comments on version 4 of the Draft Applicant Guidebook.

<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>

- On 24-25 September 2010, the Board participated in another workshop on issues related to the new gTLD program, including trademark protections and passed some resolutions specifically addressing trademark protections.
<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>
- On 12 November 2010, ICANN posted for public comment version 5 of the Draft Applicant Guidebook, incorporating a number of protections for the rights of others, and a series of papers explaining certain aspects of the current proposals for the Trademark Clearinghouse, the Uniform Rapid Suspension System and related comments and analysis.
<http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>
- On 10 December 2010, the Board resolved that ICANN had addressed the issue of trademark protection in new gTLDs by adopting and implementing various measures, including the establishment of a Trademark Clearinghouse, the Uniform Rapid Suspension System and the Post-Delegation Dispute Resolution Procedure. The Board further stated that these solutions reflected the negotiated position of the ICANN community, but that ICANN would continue to take into account public comment and the advice of the GAC.
See Board Resolution at <https://icann.org/en/minutes/resolutions-10dec10-en.htm>; see Board Meeting Minutes at <https://icann.org/en/minutes/minutes-10dec10-en.htm>
- On 21 February 2011, ICANN published numerous briefing papers on the trademark issues the GAC had identified as “outstanding” in September 2010.
<http://www.icann.org/en/announcements/announcement-6-21feb11-en.htm>
- On 23 February 2011, the GAC issued its “Indicative Scorecard” which included 30 specific recommendations relating to trademark protections on which it intended to consult with the.

<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>

- On 28 February 2011 and 1 March 2011, the GAC and the Board participated in a special two-day consultation to address the remaining outstanding issues related to the new gTLD program, including certain issues related to trademark protection.
<http://www.icann.org/en/announcements/announcement-23feb11-en.htm>
- On 4 March 2011, the Board published its comments on the GAC Scorecard.
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>
- On 15 April 2011, ICANN published an Explanatory Memorandum on Trademark Protection in the new gTLD program.
<http://www.icann.org/en/topics/new-gtlds/trademark-protection-claims-use-15apr11-en.pdf>
- Also on 15 April 2011, ICANN posted for comment version 6 of the Draft Applicant Guidebook, incorporating additional protections for the rights of others.
<http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>
- Also on 15 April 2011, ICANN issued “Revised ICANN Notes on: the GAC New gTLDs Scorecard, and GAC Comments to Board Response”
<http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-clean-15apr11-en.pdf>
- On 19 April 2011, the GAC issued “Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms”
http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf
- On 26 May 2011, the GAC issued “GAC comments on the Applicant Guidebook (April 15th, 2011 version)”
<http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>

- On 30 May 2011, ICANN posted the current version of the Applicant Guidebook.
<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

III. The Board’s Analysis of Trademark Protection in the New gTLD Program

A. Why the Board is Addressing This Issue Now

- ICANN’s mission statement and one of its founding principles is to promote competition. The expansion of gTLDs will allow for more innovation and choice in the Internet’s addressing system. The ICANN Board seeks to implement the new gTLD program together with measures designed to protect the rights of others on the Internet.
<http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>
- The Board endorsed GNSO policy recommendation states that gTLD strings should not infringe the rights of others. The Board took that recommendation as an emphasis on the need to protect intellectual property rights.
- ICANN committed to the Internet community and governments, including the U.S. Department of Commerce that it would address trademark protection in new gTLDs prior to implementing the program.
- The ICANN Board is committed to making decisions based on solid factual investigation and expert analysis.

B. Who the Board Consulted

- The GNSO
<http://gns0.icann.org/>
- The GAC
<http://gac.icann.org/>
- The ICANN Implementation Recommendation Team (“IRT”)
https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf

- The GNSO’s Special Trademark Issues Working Team (“STI”)
- The At-Large Advisory Committee (“ALAC”) <http://www.icann.org/en/committees/alac/>
- All other stakeholders and members of the community
- Legal counsel

C. What Significant Non-Privileged Materials the Board Reviewed

- In addition to all public comments received on all versions of the Applicant Guidebook, as well as all relevant GAC Communiqués (see <http://gac.icann.org/communiques>), the ICANN Board reviewed the following reports from Stakeholders:
 - 1 June 2007 GNSO Working Group on Protecting the Rights of Others’ Final Report <http://www.gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
 - 8 August 2007 GNSO Final Report – Introduction of New Generic Top Level Domains. <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>
 - 24 April 2009 IRT Draft Report and Public Comment Summary <http://forum.icann.org/lists/irt-draft-report/pdfuyqR57X82f.pdf>
 - 24 April 2009 IRT Preliminary Report, and public comment thereon <http://www.icann.org/en/topics/new-gtlds/irt-draft-report-trademark-protection-24apr09-en.pdf>; see public comments at <http://forum.icann.org/lists/irt-draft-report/>
 - 29 May 2009 IRT Final Report <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>
 - 29 May 2009 Implementation Recommendation Team Final Draft Report to ICANN Board

<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>

- 4 October 2009 ICANN Comment and Analysis on IRT Report: Post-Delegation Dispute Mechanism and Other Topics
<http://www.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf>
- 11 December 2009, STI Report
See link to Report in
<http://gnso.icann.org/resolutions/#200912>
- 12 December 2009 letter from the members of the former IRT to ICANN unanimously supporting the work of the STI process and recommendations concerning a trademark clearinghouse and a mandatory Uniform Rapid Suspension system
<http://www.icann.org/en/correspondence/irt-group-to-dengate-thrush-15dec09-en.pdf>
- 23 February 2011 GAC “Indicative Scorecard”
<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>
- 19 April 2011 GAC issued “Remaining points of difference between the ICANN Board and the Governmental Advisory Committee on New gTLD Rights Protection Mechanisms”
http://gac.icann.org/system/files/20110419-GAC_comments_on_NewgTLD_Rights_Protection.pdf
- 26 May 2011, the GAC issued “GAC comments on the Applicant Guidebook (April 15th, 2011 version)”
<http://www.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>
- ICANN prepared materials
 - Each version of the Applicant Guidebook, including all ICANN created explanatory memoranda and the specific proposals for trademark protections, along with hundreds of pages of public comment summaries and analysis related to trademark protections.
(i) <http://www.icann.org/en/topics/new-gtlds/comments->

[en.htm](http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem); (ii) <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm#expmem>; (iii) <http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm>; (iv) <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; (v) <http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm>; (vi) <http://www.icann.org/en/announcements/announcement-4-15feb10-en.htm>; (vii) <http://www.icann.org/en/topics/new-gtlds/summaries-4-en.htm>; (viii) <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; (ix) <http://www.icann.org/en/topics/new-gtlds/comments-analysis-en.htm>; (x) <http://www.icann.org/en/topics/new-gtlds/dag-en.htm>; (xi) <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; and (xii) <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>

D. What Concerns the Community Raised

- There is a need for adequate protection of intellectual property rights in new and existing gTLDs.
- If the introduction of new gTLDs leads to increased malicious conduct on the Internet, then trademark owners may pay a disproportionate percentage of costs associated with enforcing standards of behavior.
- Defensive domain name registrations in new gTLDs generate substantial costs for trademark owners.
- Registry behavior may cause or materially contribute to trademark abuse, whether through a TLD or through domain name registrations in the TLD.
- Legal rights that a party seeks to protect through Rights Protection Mechanisms should be capable of being authenticated, at least if the authenticity of such rights is challenged.

- Administrative dispute resolution procedures provide trademark owners with relatively swift and inexpensive alternatives to arbitration and litigation.
- Recurring sanctions may not be a sufficient remedy for wrongful conduct; suspension and termination may be necessary remedies.
- Policies developed to prevent and remedy trademark abuses in the DNS are expected to build upon the framework of existing intellectual property laws to minimize burdens on trademark owners and contribute to the orderly functioning of the DNS.
- The introduction of new gTLDs may lead to consumer confusion if one trademark owner registers its mark in one gTLD while another registers an identical or similar mark in another gTLD. To the extent that Internet users are unable (or become unaccustomed) to associate one mark with a specific business origin, the distinctive character of the mark will be diluted.

E. What Steps ICANN Has Taken or Is Taking to Protect the Rights of Others in New gTLDs

The Board believes the following measures will significantly help to protect the rights of others on the Internet. ICANN has incorporated the majority of these measures into the current version of the Applicant Guidebook and the registry agreement, and its efforts to implement the remaining measures are ongoing:

- Pre-delegation objection procedures.
- Mandatory publication by new gTLDs of policy statements on rights protection mechanisms, including measures that discourage registration of domain names that infringe intellectual property rights, reservation of specific names to prevent inappropriate name registrations, minimization of abusive registrations, compliance with applicable trademark and anti-cyber squatting legislation, protections for famous name and trademark owners and other measures.
- Mandatory maintenance of thick Whois records to ensure greater accessibility and improved stability of records.

- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars
- The requirement for all new registries to offer both a Trademarks Claims service and a Sunrise period.
- Post-delegation dispute resolution procedures that allow rights holders to address infringing activity by a registry operator that may be taking place after delegation.
- Implementation of the Uniform Rapid Suspension System that provides a streamline, lower-cost mechanism to suspend infringing names
- The continued application of the Uniform Domain Name Dispute Resolution Policy on all new gTLDs.

F. What Factors the Board Found to Be Significant

The Board considered numerous factors in its analysis of trademark protection in the new gTLD program. The Board found the following factors to be significant:

- The GNSO’s Working Group on Protecting the Rights of Others was not able to reach consensus on “best practices” for Rights Protection Mechanisms;
- While economic studies revealed that there will be both benefits and cost to trademark holders associated with new gTLDs, no determination could be made that the costs outweigh the benefits.
- New gTLDs would promote consumer welfare.
- The availability and efficacy of dispute resolution mechanisms and appropriately-designed modifications of ICANN procedures for protecting intellectual property.
- The need for dispute resolution mechanisms to be comprehensive enough to expand with the addition of new gTLDs.

- The need to balance the protection of trademark rights with the practical interests of compliant registry operators to minimize operational burdens and the legitimate expectations of good faith domain name registrants.
- The risk of increasing exposure of participants to litigation.
- The lack of reported problems with ICANN’s previous introductions of new TLDs.

IV. The Board’s Reasons for Proceeding to Launch the New gTLD Program While Implementing Measures to Protect Trademarks and Other Rights

- ICANN’s “default” position should be for creating more competition as opposed to having rules that restrict the ability of Internet stakeholders to innovate.
- New gTLDs offer new and innovative opportunities to Internet stakeholders.
- Brand owners might more easily create consumer awareness around their brands as a top-level name, reducing the effectiveness of phishing and other abuses.
- Revised applicant procedures and agreements reflecting the measures to mitigate the risk of malicious conduct will permit ICANN to address certain risks of abuse contractually and also will permit ICANN to refer abuses to appropriate authorities. ICANN can amend contracts and the applicant guidebook to address harms that may arise as a direct or indirect result of the new gTLD program.
- ICANN has addressed the principal concerns raised by stakeholders about the potential for proliferation of malicious conduct in the new gTLD space by implementing measures to mitigate that risk, including centralized zone file access, a high security TLD designation and other mechanisms. A combination of verified security measures and the implementation of DNSSEC will allow users to find and use more trusted DNS environments within the TLD market.
- ICANN has addressed the principal concerns raised by stakeholders about the protection of trademarks in the new gTLD space by

implementing other measures to enhance protections for trademarks and other rights, including pre-delegation dispute resolution procedures, a trademark clearinghouse, and post-delegation dispute resolution procedures.

- To the extent that there are costs to trademark owners or others, ICANN has worked with the community to address those concerns, and ICANN pledges to continue that effort.

Reference Material 12.



— Applicant Guidebook

The Applicant Guidebook provides a step-by-step procedure for new gTLD applicants.

It specifies what documents and information are required to apply, the financial and legal commitments of operating a new gTLD, and what to expect during the application and evaluation periods.

APPLICANT GUIDEBOOK

Presented in Full and by Module

Note: Due to the technical complexity and length of the Applicant Guidebook, translated versions are not always published on the same date as the English version. The most recently translated versions are posted here.

English	Arabic	Chinese	French	Russian	Spanish
New gTLD Applicant Guidebook 4 June 2012 (/en/applicants/agb/guidebook-full-04jun12-en.pdf) [PDF, 5.88 MB]	دليل المتقدم بطلب gTLD في 19 سبتمبر 2011 http://www.icann.org /ar/topics/new-gtlds/rfp-clean-19sep11-5.pdf [ar.pdf] [ميغابايت]	gTLD 申请人指导手册 2012 年 1 月 11 日版 (/zh/applicants/agb/guidebook-full-11jan12-zh.pdf) [PDF, 3.49 MB]	Guide du candidat pour les nouveaux gTLD 19 sept 2011 http://www.icann.org /fr/topics/new-gtlds/rfp-clean-19sep11-fr.pdf [PDF, 4.51 MB]	Руководство кандидата программы ввода новых рДВУ от 19 сентября 2011 г. http://www.icann.org /ru/topics/new-gtlds/rfp-clean-19sep11-ru.pdf [PDF, 10.12 MB]	Guía para el Solicitante de Nuevos gTLDs 19 de septiembre de 2011 http://www.icann.org /es/topics/new-gtlds/rfp-clean-19sep11-es.pdf [PDF, 3.1 MB]
Module 1 Introduction to the gTLD Application Process (/en/applicants/agb/intro-04jun12-en.pdf) [PDF, 501 KB]	الوحدة 1 gTLD مقدمة للتعريف بعملية تقديم طلبات الحصول على ar/applicants/agb/intro-11jan12-459.pdf [ar.pdf] [KB]	模块 1 通用顶级域名 (gTLD) 申请流程简介 (/zh/applicants/agb/intro-11jan12-zh.pdf) [PDF, 842 KB]		Модуль 1 Введение в процесс подачи заявок на рДВУ (/ru/applicants/agb/intro-11jan12-ru.pdf) [PDF, 641 KB]	
Module 2 Evaluation Procedures (/en/applicants/agb/evaluation-procedures-04jun12-en.pdf) [PDF, 917 KB] Key Content Evaluation Questions and Criteria (/en/applicants		模块 2 评估程序 (/zh/applicants/agb/evaluation-procedures-11jan12-zh.pdf) [PDF, 1.01 MB] 主要内容 评估问题和标准 (/zh/applicants/agb/evaluation-questions-criteria-			

<p>/agb/evaluation-questions-criteria-04jun12-en.pdf [PDF, 746 KB]</p>		<p>11jan12-zh.pdf [PDF, 634 KB]</p>			
<p>Module 3 Objection Procedures (/en/applicants/agb/objection-procedures-04jun12-en.pdf) [PDF, 261 KB]</p> <p>Key Content New gTLD Dispute Resolution Procedure (/en/applicants/agb/dispute-resolution-procedure-04jun12-en.pdf) [PDF, 120 KB]</p>		<p>模块 3 异议程序 (/zh/applicants/agb/objection-procedures-11jan12-zh.pdf) [PDF, 458 KB]</p> <p>主要内容 新 gTLD 争议解决程序 (/zh/applicants/agb/dispute-resolution-procedure-11jan12-zh.pdf) [PDF, 318 KB]</p>			
<p>Module 4 String Contention Procedures (/en/applicants/agb/string-contention-procedures-04jun12-en.pdf) [PDF, 429 KB]</p>	<p>الوحدة 4 إجراءات التنافس على السلسلة ar/applicants/agb/string-contention-procedures-11jan12-605.PDF [ar.pdf] [KB]</p>	<p>模块 4 字符串争用处理程序 (/zh/applicants/agb/string-contention-procedures-11jan12-zh.pdf) [PDF, 644 KB]</p>	<p>Module 4 Procédures de conflits de chaînes (/fr/applicants/agb/string-contention-procedures-11jan12-fr.pdf) [PDF, 475 KB]</p>	<p>Модуль 4 Процедуры разрешения разногласий в отношении строк (/ru/applicants/agb/string-contention-procedures-11jan12-ru.pdf) [PDF, 586 KB]</p>	
<p>Module 5 Transition to Delegation (/en/applicants/agb/transition-delegation-04jun12-en.pdf) [PDF, 320 KB]</p> <p>Key Content Base Agreement & Specifications (/en/applicants/agb/base-agreement-specs-04jun12-en.pdf) [PDF, 917 KB]</p> <p>Uniform Rapid Suspension (/en/applicants/agb/urs-04jun12-en.pdf) [PDF, 280 KB]</p>		<p>模块 5 授权移交 (/zh/applicants/agb/transition-delegation-11jan12-zh.pdf) [PDF, 450 KB]</p> <p>主要内容 新 gTLD 协议 (/zh/applicants/agb/base-agreement-specs-11jan12-zh.pdf) [PDF, 635 KB]</p> <p>统一快速暂停系统 (URS) (/zh/applicants/agb/urs-11jan12-zh.pdf) [PDF, 258 KB]</p>			

<p>Trademark Clearinghouse (/en/applicants/agb/trademark-clearinghouse-04jun12-en.pdf) [PDF, 163 KB]</p> <p>Post Delegation Dispute Resolution (PDDRP) (/en/applicants/agb/pddrp-04jun12-en.pdf) [PDF, 181 KB]</p> <p>Registry Restriction Dispute Resolution (RRDRP) (/en/applicants/agb/rdrp-04jun12-en.pdf) [PDF, 257 KB]</p>		<p>商标信息交换机构 (/zh/applicants/agb/trademark-clearinghouse-11jan12-zh.pdf) [PDF, 284 KB]</p> <p>商标授权后争议解决程序(商标 PDDRP) (/zh/applicants/agb/pddrp-11jan12-zh.pdf) [PDF, 248 KB]</p> <p>注册管理机构注册限制争议解决程序 (RRDRP) (/zh/applicants/agb/rdrp-11jan12-zh.pdf) [PDF, 228 KB]</p>			
<p>Module 6 Application Terms & Conditions (/en/applicants/agb/terms-04jun12-en.pdf) [PDF, 130 KB]</p>	<p>الوحدة 6 طلبات نطاقات المستوى الأعلى - الشروط (/ar/applicants/agb/terms-11jan12-132.PDF) [ar.pdf] [KB]</p>	<p>模块 6 顶级域申请 - 条款和条件 (/zh/applicants/agb/terms-11jan12-zh.pdf) [PDF, 285 KB]</p>	<p>Module 6 Candidature à un domaine de premier niveau – Conditions générales (/fr/applicants/agb/terms-11jan12-fr.pdf) [PDF, 478 KB]</p>	<p>Модуль 6 Заявка на домен верхнего уровня - условия и положения (/ru/applicants/agb/terms-11jan12-ru.pdf) [PDF, 195 KB]</p>	
<p>Supporting Material</p>	<p>دعم المواد</p>	<p>辅助材料</p>		<p>вспомогательные материалы</p>	
<p>Summary of Changes to the Applicant Guidebook (/en/applicants/agb/summary-changes-applicant-guidebook-04jun12-en.pdf) [PDF, 121 KB]</p> <p>Change Review Process: gTLD Applicant Guidebook (http://www.icann.org/en/topics/new-gtlds/change-review-applicant-guidebook-19sep11-en.pdf) [PDF, 271 KB]</p> <p>(19 Sept 11)</p>	<p>ملخص التغييرات التي طرأت على دليل مقدم الطلب (/ar/applicants/agb/summary-changes-applicant-guidebook-11jan12-379.PDF) [ar.pdf] [KB]</p> <p>عملية مراجعة التغييرات: كتيب المتقدم بطلب لبرنامح الجديد gTLD (http://www.icann.org/ar/topics/new-gtlds/change-review-applicant-guidebook-19sep11-ar.pdf) [PDF, 109 KB]</p>	<p>申请人指导手册变更摘要 (/zh/applicants/agb/summary-changes-applicant-guidebook-11jan12-zh.pdf) [PDF, 981 KB]</p> <p>变更审核流程: 新 gTLD 申请人指南 (http://www.icann.org/zh/topics/new-gtlds/change-review-applicant-guidebook-19sep11-zh.pdf) [PDF, 335 KB]</p>	<p>Changer Processus d'examen: Guide de candidature pour les nouveaux gTLD (http://www.icann.org/fr/topics/new-gtlds/change-review-applicant-guidebook-19sep11-fr.pdf) [PDF, 347 KB]</p>	<p>Сводка изменений Руководства кандидата (/ru/applicants/agb/summary-changes-applicant-guidebook-11jan12-ru.pdf) [PDF, 549 KB]</p> <p>Процесс пересмотра и внесения изменений: Руководство кандидата программы ввода новых рДВУ (http://www.icann.org/ru/topics/new-gtlds/change-review-applicant-guidebook-19sep11-ru.pdf) [PDF, 494 KB]</p>	<p>Proceso de revisión de cambios: Guía para el Solicitante de Nuevos gTLDs (http://www.icann.org/es/topics/new-gtlds/change-review-applicant-guidebook-19sep11-es.pdf) [PDF, 339 KB]</p>

[Financial Projection Templates \(/en/applicants/agb/fin-proj-template-28dec11-en.pdf\) \[Excel \(/en/applicants/agb/fin-proj-template-28dec11-en.xls\)\]](#)

[Instructions: TLD Applicant – Financial Projections \(/en/applicants/agb/fin-proj-instrux-12dec11-en.pdf\)](#)

[Evaluation Questions \(/en/applicants/agb/evaluation-questions-criteria-04jun12-en.pdf\)](#)

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Reference Material 13.



New Generic Top-Level Domains

NEW GTLD UPDATE (30 MAY 2012)

New gTLD Update by Akram Atallah, COO

The TLD Application System, or TAS, has now closed.

As of 23.00 GMT/UTC today, with one hour remaining before the system closed, just over 1900 applications had been submitted in TAS.

We will reconcile all payments and submitted applications, and will release the final numbers when the applied-for domain names are published. As we said yesterday, our target date for publishing the list of applied-for domain names is 13 June 2012.

We thank all applicants and the ICANN community for their support throughout the application process.

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Reference Material 14.



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Institutions

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RECOGNISED ORGANISATIONS

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Organisations recognised by the International Olympic Committee

IF Associations	
ASOIF	Association of Summer Olympic International Federations
AIOVF	Association of the International Olympic Winter Sports Federations
ARISF	Association of IOC-Recognised International Sports Federations
	SportScout
IOC Associations	
ACNO/ANOC	Association of National Olympic Committees
ACNO/ANOCA	Association of National Olympic Committees of Africa
OCA	Olympic Council of Asia
COE/EOC	The European Olympic Committees
ODEPA/PASO	Pan-American Sports Organisation
ODESUR	Organización Deportiva Suramericana
ONOC	Oceania National Olympic Committees
ODECAGE	Organización Deportiva Centroamericana y Caribe

Education | Dissemination of the Olympic Ideal | Fair Play

THE IOC

THE ORGANISATION

- Introduction
- National Olympic Committees (NOCs)
- International Sports Federations (IFs)
- Organising Committees for the Olympic Games (OCOGs)
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INTERNATIONAL SPORTS FEDERATIONS

Home > The IOC > International Sports Federations (IFs)

MISSION **ASOIF** **ADWIF** **ARISF** **SPORTACCORD**

The International Sports Federations (IFs) are responsible for the integrity of their sport on the international level.

The International Sports Federations are international non-governmental organisations recognised by the International Olympic Committee (IOC) as administering one or more sports at world level. The national federations administering those sports are affiliated to them. While conserving their independence and autonomy in the administration of their sports, international sports federations must ensure that their statutes, practices and activities conform with the Olympic Charter.

The IFs have the responsibility and duty to manage and to monitor the everyday running of the world's various sports disciplines, including those on the programme, the practical organisation and the development of their sports. Each IF governs its sport at world level and ensures its promotion and development. They monitor the everyday administration of their sports and guarantee the regular organisation of competitions as well as respect for the rules of fair play.

The IFs may formulate proposals addressed to the IOC concerning the Olympic Charter and the Olympic Games. They may also be invited by the IOC to participate in the Olympic Games. Their opinions concerning the candidates for organising the Olympic Games, particularly concerning the technical capabilities of the candidate cities, collaborate in the preparation of the Olympic Congresses, and participate in the activities of the IOC commissions.

Association of Federations

When they are elected and decide on their events calendar, the summer federations, the winter federations and the recognised federations have formed associations: the Association of Summer Olympic International Federations (ASOIF), the Association of International Olympic Winter Sports Federations (AOWIF), the Association of IOC-Recognised International Sports Federations (ARISF) and the SportAccord, which also includes other sports federations.

THE IOC

THE ORGANISATION

GOVERNANCE OF THE OLYMPIC MOVEMENT

- Introduction
- National Olympic Committees (NOCs)
- International Sports Federations (IFs)
- Recognised Organisations

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INTERNATIONAL SPORTS FEDERATIONS

Home > The OS > International Sports Federations (IFs)

MISSION | **ASOIF** | **AOWF** | **ANSP** | **SPORTACCORD**

SportAccord was founded as The General Association of International Sports Federations (GAISF) in 1967.



UNITE & SUPPORT

SportAccord groups together the International Sports Federations and various associations with the aim of defending worldwide sport, becoming better informed and making themselves known, and cooperating and coordinating their activities.

Its aim is to create a forum which brings together all the sports bodies once a year for an exchange of views, to discuss common interests, to coordinate their activities and to ensure that all its members make close links between its members and all sports organizations and protect common interests and collect, verify and disseminate information.

THE IOC

- THE ORGANISATION
- GOVERNANCE OF THE OLYMPIC MOVEMENT
- Introduction
- National Olympic Committees (NOCs)
- International Sports Federations (IFs)
- Organising Committees for the Olympic Games (OCOGs)
- Recognised Organisations

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IOC Members
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Reference Material 15.



Media Release

31 May 2012

Federation of International Lacrosse becomes newest member of SportAccord

By Tom Hayes, Director of Development

The Federation of International Lacrosse has been accepted as the 106th member of SportAccord. This decision took place at the annual General Assembly of SportAccord meeting on May 25th in Quebec City, Canada. President Stan Cockerton and Development Director, Tom Hayes were in attendance and President Stan Cockerton presented the acceptance speech on behalf of the Federation of International Lacrosse.

SportAccord is the umbrella organization for all Olympic, non-Olympic, and international sports federations. "Renamed SportAccord in 2009, the former General Association of International Sports Federations (GAISF)..... the purpose of SportAccord is not to replace the IFs, ASOIF, AIOWF or ARISF, nor to step on their respective autonomy and authority; it is about uniting the world of sport. SportAccord fully recognises the IOC and the Olympic Movement's authority; it is and will remain a loyal partner in the achievements of the Olympic Movement objectives."

The FIL sees its membership with SportAccord as an opportunity for increased cooperation, access to services and promotion as well as being the first step in the pathway toward Olympic recognition. SportAccord President, Hein Verbruggen, warmly welcomed the FIL as its newest federation and FIL President Cockerton responded to the acceptance with an expression of gratitude for acceptance stating "this is a very exciting day for FIL. We are honoured to become a SportAccord member, and will continue to strive forward in our pursuit of the Olympic dream".

The Federation of International Lacrosse was established in August 2008 in a merger of the men's and women's lacrosse associations. FIL is responsible for the Men's World Championship, World Indoor Championship, Women's World Cup, and both the Men's and Women's U19 World Championships. These events take place once every four years. For further information on both organizations, please contact www.filacrosse.com or www.sportaccord.com

Reference Material 16.

21 February 2011

NEW gTLDs PROPOSED FINAL APPLICANT GUIDEBOOK PUBLIC COMMENT SUMMARY

Sources:

Public Comment Postings (12 Nov. 2010-15 Jan. 2011). The full text of the comments may be found at <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>.

GENERAL COMMENTS

Support for New gTLD Program

Key Points

- Supporters have argued, in general, that New gTLDs promote, competition, consumer choice, innovation and can help new businesses grow.
- Other supporters argue that while not perfect, the current proposed final AG is robust enough to support the launch of the new gTLD application process. The elements that still cause concern can be fixed within the proposed schedule.

Summary of Comments

One of ICANN's core principles is to bring competition to the registry space. New TLDs will bring innovation, consumer choice, and lower prices. Five years ago the battle was fought--the anti-TLD community lost and the vast majority of the community reached consensus that new TLDs should be introduced. The ICANN Board—with the GAC at its side—announced its approval in June 2008, which was the correct decision. The anti-TLD forces have been attempting to prevent the communities' will, consumer choice and innovation and it is no surprise that they are firing their last shots on the eve of final approval. Their efforts should be rebuffed. ICANN's implementation plan has taken into account the multitude of inputs from scores of individuals and entities. ICANN has made countless changes to the guidebook in the process and has explained its decisions along the way. Just because an input was disagreed with does not mean that it was ignored. How many economic studies are needed to show that there is demand for new TLDs? Perhaps the real life experience of a half-million .co names in three months is sufficient evidence. It is time to move on with the process--the Guidebook is ready to go and we have all waited far too long. *D. Schindler (5 Dec. 2010).*

While not perfect, the current proposed final AG is robust enough to support the launch of the new gTLD application process. The AG will evolve as the process moves forward.

It is time to put it to the test by approving the AG so we can move forward with the proposed timeline ICANN has set for the new gTLD launch which will create more competition in the market and greater benefits to consumers. *Network Solutions (8 Dec. 2010)*. *Demand Media (8 Dec. 2010)*. *AFNIC (9 Dec. 2010)*. *AusRegistry (9 Dec. 2010)*. *Domain Dimensions (9 Dec. 2010)*.

The NCUC supports prompt commencement of the application program for new gTLDs. The elements that still cause concern (e.g. IO) can be fixed within the proposed schedule. *NCUC (10 Dec. 2010)*.

It is time to put the demand to prove the unpredictable to rest and allow innovation and progress to flourish. At ICANN meetings policy based on consensus position is developed. Yet for the last two years we have heard a few self-protectionist opponents demand study after study that will prove the consumer need for innovation. In response many analogies have been expressed. Did the Wright Brothers do market studies to get a solid number on the demand to fly from consumers? Looking back, would that study have been accurate? How about the innovations to the bicycle? The consumer "need" for the iPhone? Juan Calle, president of .co said "With the new domain extensions, creativity can live to the right of the dot. Registries will have to innovate to stay alive." *E. Pruis (6 Dec. 2010)*.

RySG supports the introduction of new gTLDs and believes the time has come to introduce further competition into the marketplace. RySG does believe certain issues it highlights in its comments need to be resolved and hopes that ICANN provides the latitude to allow further amendment to the AG even beyond the Cartagena meeting if necessary. RySG is ready to engage with ICANN Staff to ensure resolution of these items with no impact on the projected timetable for the new gTLD round. Use of the "TDG" legal group may be the appropriate forum to resolve these issues in a timely fashion. *RySG (7 Dec. 2010)*.

New gTLDs are a platform for innovation. This change will benefit individual users and especially large brands on a scale not previously seen in the DNS. Brand owners will be the biggest beneficiaries; they will use their own top level domain to manage their Internet presence. When users grow to expect to find Internet resources at ".company" the need for brand protection and the opportunity for user confusion will be greatly diminished. We also should think in terms of how a large number of domains in the aggregate will provide competition for .com. This issue cannot be understood by studying the extremely limited TLD introductions of the past. *Tucows (8 Dec. 2010)*.

Overall, it has been established that external benefits of the gTLD program exceed its external costs. For each new gTLD individually the right thing to do is to focus preventive action on the cases where external costs will occur. It is wrong to stop the entire gTLD program because of concern about externalities from some potential gTLDs. *W. Staub (10 Dec. 2010)*. *F. Krueger (10 Dec. 2010)*.

ICANN should move ahead with the new gTLD program so that the benefits of Internet connectivity can be expanded to places such as Africa. There are powerful and compelling reasons for Africa to need the .africa gTLD and now is the time for this opportunity to happen. *DotConnectAfrica (13 Dec. 2010)*.

New gTLDs will create innovation and create a multitude and variety of jobs, all of which will create competition. New gTLDs will also bring more security to the Internet through the requirement to utilize DNSSEC. Please do not allow any further delay. Begin the communications period so people can get to work. *E. Pruis (6 Jan. 2011)*.

New gTLDs should proceed without delay, as they will bring innovation and many benefits. In particular they will bring about “cause based TLDs” –ie. those TLDs that will benefit the greater and global public good. *DotGreen (9 Jan. 2011)*.

Opposition to New gTLD Program

Key Points

- Critics have argued that the program does not serve the public interest, the risks outweigh the benefits and ICANN lacks sufficient public support. Some also oppose the introduction of an “unlimited” number of TLDs.
- Other critics express concern that the critical overarching issues, including among other things a failure to include strong trademark protections has not been fully addressed.

Summary of Comments

ICANN in pursuing the new gTLD program is acting against the broader public interest and only in the interests of itself and a small number of “insiders” who would directly profit from short term schemes that threaten the long term stability of the Internet naming system and that impose externalities on third parties (via increased confusion and defensive registration costs). “Innovation” from new gTLDs is a myth. The public has not been clamoring for new TLDs. The past new TLDs (e.g., .name, .asia, .jobs, .travel) were failures for the public. ICANN needs to go back and consider proposals such as the competitive bidding concept recommended by the DOJ (i.e., tender processes for operation of new TLDs for fixed terms at the lowest possible cost to consumers), or our suggestion of “Ascended TLDs” which uses the legal concept of easements to ensure fair allocation of new TLDs taking into full account the existing property rights of domain registrants. *G. Kirikos (13 Nov. 2010)*. *G. Kirikos (24 Nov. 2010)*. *AIPLA (6 Dec. 2010)*.

ICANN and its Board need to get things right and stop gambling with the future of the DNS. ICANN needs to stop acting like a startup trying to make commercial gains for itself, and remember that it was created to serve the public interest. There has been talk

of forming a P2P DNS due to unhappiness with ICANN and also talk of creating “Response Policy Zones.” This would threaten security and stability; it would be inconsistent with universal resolvability of domains due to blocking lists that would override ICANN’s root. DAGv5 is nowhere close to “getting things right” and must be abandoned. *G. Kirikos (16 Jan. 2011).*

The Department of Commerce (DOC) ultimately has the full control over any new TLDs that enter into the root zone. If ICANN continues to pursue its current dangerous path of introducing new gTLDs, we call upon the NTIA, DOC, DOJ and GAC to put an end to ICANN’s plan and leave open the option of dismantling ICANN by ending the IANA contract and taking the functionality in-house again. ICANN must scrap its existing work on new gTLDs and properly research all possible allocation mechanisms before any final decisions are made. DOC should reject all attempts to increase the number of new TLDs (besides the ones that have consensus public support, such as IDN ccTLDs) until such time as a process exists that has the support of all stakeholders. *G. Kirikos (13 Nov. 2010).* *G. Kirikos (24 Nov. 2010).*

The DOC/NTIA/DOJ should open up formal public comments via the Federal Register notices and allow for direct submissions by stakeholders on this matter and on ICANN governance in general. Public televised hearings in Washington might also be helpful to understand what alternatives might be available. The DOC/NTIA/DOJ and GAC should compel ICANN to write down objective, scientific and rigorous criteria under which they would abandon the project. This would crystallize all outstanding issues and allow the public to move on, once we have been able to demonstrate that we have met the standards for termination. It is not acceptable for ICANN to waste millions of our dollars to push the agenda of a small group of insiders or for ICANN to pretend that the thresholds have been met for the overarching issues. Good policy making requires objective standards. *G. Kirikos (10 Dec. 2010).*

IOC opposition and request for ICANN response to issues raised. The IOC maintains its opposition to the introduction of new gTLDs because it is inherently flawed and injurious to owners of famous trademarks—particularly non-profit rights holders that rely in part on special statutory protection. IOC’s recommendations in its comments should not be taken as a waiver of the IOC’s right to proceed against ICANN for damages resulting to the IOC or the Olympic Movement from the implementation of the proposed new gTLD system. If these critical issues are not resolved and ICANN chooses not to place the Olympic trademarks on the reserved names list, then the IOC and its National Olympic Committees are prepared to employ all available legislative, regulatory, administrative and judicial mechanisms to hold ICANN accountable for damage caused to the Olympic Movement. The IOC prefers a prudent solution reached by collaborative means. The IOC also requests that ICANN respond to the points raised by the IOC in a face to face meeting and/or in writing. *IOC (29 Nov. 2010).*

Microsoft continues to oppose introduction of an unlimited number of new ASCII gTLDs. It will not increase competition but will increase fraud and abuse and likely destabilize the Internet as a commercial platform, while imposing major financial burdens and

resource allocation requirements on virtually the entire non-contracting party, non-gTLD applicant business community. *Microsoft (9 Dec. 2010).*

ICANN still has failed to address the critical overarching issues, including among other things a failure to include strong trademark protections and to ensure that the costs of the program will not exceed its benefits, even after publishing five drafts of the AG. *INTA (8 Dec. 2010). U.S. Chamber of Commerce et al. (9 Dec. 2010). Microsoft (9 Dec. 2010). BBC (10 Dec. 2010). RE/MAX (10 Dec. 2010). Adobe Systems (10 Dec. 2010). Verizon (10 Dec. 2010). IHG (Module 5, 10 Dec. 2010). LEGO (11 Jan. 2011). VKR (12 Jan. 2011). Arla Foods (11 Jan. 2011). Vestas (11 Jan. 2011).*

The proposed new gTLD program should be halted until sufficient and convincing documentation has been produced that its impact will be to allow for more innovation, choice and change to the Internet's addressing system. There is no documentation available supporting the conclusion that the Internet suffers from insufficient competition in the domain name marketplace. All is based on unsupported "expectation." If such documentation cannot be produced—which the conclusions of the economic case study seem to suggest--then the new gTLD program as a whole should be cancelled. The only ones in favor of the program are the ones who can make money out of it—ICANN and the registrars. The Internet community including private users and brand owners are not interested. *H. Lundbeck (12 Jan. 2011).*

The overriding concern of RIAA et al. is that any music themed gTLD is used productively and responsibly, and not as a means to facilitate copyright or trademark infringement. ICANN should expeditiously implement appropriate changes to the DAG to address these critical concerns. RIAA et al. prefer a practical solution to its concerns and hope to avoid the need to escalate the issue further. *RIAA et al. (11 Jan. 2011).*

The TLDs "political" and "company" are very bad ideas because they will put Internet stability at risk and fracture it at some point—these are TLDs about issues that people often get very angry about. However, .toys, .cars, and .sports and so on should be okay because they define industries. The new gTLD program would force ICANN to put huge resources into legal battles instead of in maintaining infrastructure. Another result from all this so-called innovation is that governments, companies and individuals will have to pay to be exactly as they are now (i.e. tax). In addition, ICANN does nothing about the VeriSign monopoly abuse on domain prices. Instead of new gTLDs, why not start with the obvious issue of promoting competition and ending monopoly abuse which affects everyone? If ICANN really is a non-profit organization with one common goal of a secure, stable and unified global Internet, then it should stop the big money operations named as "innovation" and leave real innovation for online entrepreneurs. *Lucas (10 Jan. 2011).*

The GNSO's process for new gTLDs is so damaging to the Domain Name Space and the Internet as a whole that it should be sent back to the GNSO for serious revision,

rather than expecting the ICANN Board to try and out point the GAC with such a fundamentally flawed proposition. *P. Tattersfield (15 Jan. 2011).*

ICANN should completely abandon the new gTLD program as currently proposed and devise a new program of categories that will meet the purposes for which ICANN was set up and the Affirmation of Commitments. The new gTLD program is nothing less than an attempt to replicate the Dot Com registry at the TLD level to enable the transfer of the Internet's current \$100 trillion value from its current owners to ICANN insiders for a tiny fraction of that value. Company brand TLDs will be delegated in the first year, setting off the effect that every other company meeting the criteria will have to be given the same opportunity for a .brand TLD. This will mean that the key element of the domain name will move from the left of the dot to the right of the dot. *P. Foody (18 Jan. 2011).*

ICANN Procedures

Key Points

- ICANN has performed careful analysis of the obligations in the Affirmation of Commitments and taken appropriate steps to meet all commitments. New gTLD program positions sometimes run counter to positions of interested parties. That does not mean that ICANN is not fulfilling its other duties, or that the opinions have not been fully discussed and considered.
- An effort is underway to enhance the reporting of rationale for all Board decisions. This has already been instituted for the Board meeting of 25 January 2011 and will be refined going forward. Rationale will accompany final decisions taken by the Board on the new gTLD program.
- The Board received updates on public comment received up to their meeting on 10 December, and ultimately, the comment period was extended through 15 January.
- Contributions by stakeholder groups, such as advice on implementation models, are indeed considered significant and have been considered at length by ICANN and the community and, where possible, incorporated.

Summary of Comments

ICANN obligations in the Affirmation of Commitments.

ICANN should ensure that it meets its obligations as contained in the Affirmation of Commitments (AOC) prior to implementation of the new gTLD program. To date there is an apparent failure to do so. The improvements in operations which ICANN committed to in the AOC (e.g., transparency, accountability, fact-based policy development) have yet to be seen.

In the context of the new gTLD program, ICANN is failing to meet its commitment to “provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.” For example, ICANN has failed to provide a thorough and reasoned explanation of how ICANN moved to the November 5, 2010, decision allowing full cross ownership. To ensure that the global public interest is being served, ICANN needs to clearly document and explain the decisions it makes on these and all issues, as recently affirmed by the GAC in its November 22, 2010 letter.

Despite ICANN’s commitments in the AOC to adequately address issues prior to implementation of an expansion program, ICANN still has not completed the economic studies and analysis evaluating the threshold question of whether the benefits of expansion outweigh the costs. No information on how the required economic studies are to be finished and evaluated calls into question the credibility of establishing a timeline at this juncture. Given the volume of material recently posted by ICANN (Proposed Final AG and supporting documentation), a thorough and thoughtful analysis by the U.S. government will take more than the twenty working days allotted in the ICANN public comment process. The suggestion that the ICANN Board in Cartagena could make an informed decision regarding the timing of the new gTLD program launch is unrealistic.

NTIA (2 Dec. 2010). NCTA (10 Dec. 2010). AT&T (10 Dec. 2010). P. Tattersfield (10 Dec. 2010). Danish Ministry (10 Dec. 2010). CADNA (10 Dec. 2010). Adobe Systems (10 Dec. 2010). IHG (Module 5, 10 Dec. 2010).

ICANN’s substitution of process for substantive dialogue (a drive toward conclusion without more meaningful dialogue) regarding the new gTLD program can hardly be reconciled with the AOC calling for ICANN “to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.” ICANN’s policies should reflect the considered and reasoned input made by representative bodies with public responsibilities and substantive expertise. *WIPO Center (2 Dec. 2010). IACC (9 Dec. 2010). CADNA (10 Dec. 2010). BBC (10 Dec. 2010).*

The accelerated process with Board consideration of the guidebook on December 10 is inadequate for full consideration of the significant new elements contained in the proposed final AG. The fact that the Board appears to be rushing to take action on the guidebook before new Board members are seated creates a perception that the process lacks adequate transparency and accountability. Approval of the guidebook in its current form would not “adequately address” all the numerous issues identified in the AOC, paragraph 9.3. *COA (3 Dec. 2010). INTA (8 Dec. 2010) Microsoft (9 Dec. 2010). Time Warner (9 Dec. 2010). News Corporation (9 Dec. 2010). NCTA (10 Dec. 2010).*

ICANN’s performance in drafting the AG illustrates the difficulties in the DNS being governed, supposedly in the public interest, by an entity that receives its funding from incremental fees on domain name registrations, and whose only means of enforcing its

policies is through legal contracts. ICANN's rush to launch a torrent of new gTLD registries without strong rules or the capabilities to enforce them reflects, more than anything else, ICANN's financial interest in continually increasing the number of domain names. *RE/MAX (10 Dec. 2010)*.

Integrated approach. ICANN needs to incorporate all of the major overarching issues into a holistic implementation plan and develop comprehensive safeguards to address them. The segmented process used to date to address overarching issues has not produced such a decision. *AT&T (10 Dec. 2010)*.

Board decision making process. The Accountability and Transparency Review Team (ATRT) provides guidance on the type of process that should be used for a proceeding as important as new gTLDs. Paragraph 20 of the ATRT recommends that the Board adopt the practice of articulating the basis for its decisions and identifying the public comments that were persuasive in reaching the decision. It also recommends that the Board identify the relevant basis and public comments that were not accepted in making its decision. The ICANN Board should complete this type of reasoned decision which will show its commitment to accountability and transparency, and help to ensure that ICANN's decision is "embraced, supported and accepted" by the public and the Internet community. *AT&T (10 Dec. 2010)*. *CADNA (10 Dec. 2010)*.

It is recognized that a wave of new gTLDs has the potential to bring innovation and greater competition to the DNS. However, it is our strong belief that the latest draft of ICANN's new gTLD plan would not meet its AOC obligations to adequately address consumer protection and rights protection. *U.S. Chamber of Commerce et al. (9 Dec. 2010)*.

Public comment opportunity not meaningful. Those in ICANN responsible for the new gTLD program do not seem to take seriously into account the thoroughly documented concerns of numerous companies and persons interested in a well-functioning Internet which at the same time provides legitimate protection for trademark rights. The opportunity given by ICANN for public comments is in reality a fake one. The only thing that drives this new proposed program is money and not a sincere concern for optimum functionality of the Internet. *H. Lundbeck (12 Jan. 2011)*.

Public Comment—Request for Extension of Time. ICA respectfully requests that ICANN extend the comment period on the proposed final AG by a minimum of two weeks and preferably by an additional three weeks. A 2-3 week extension would bring this comment period into line with that provided for prior versions of the guidebook. The proposed final AG has significant new material that ICA is working to assimilate and understand. Many ICA members are in Cartagena for the ICANN meeting militating against preparation of a fully informed comment letter for consideration by ICA membership prior to its submission in just under 4 days. ICA's extension request should in no way interfere with approval of a final AG by the ICANN Board that permits opening of the application window for new gTLDs in Spring 2011. ICA hopes that the December 10th comment deadline has not been set in order to facilitate such a vote by the ICANN

Board in Cartagena. The current comment deadline will occur just hours before the start of the Board meeting in Colombia. Given time and work burdens on ICANN staff there is no way they can review and meaningfully summarize suggestions and concerns expressed in the final round of comments (most of which are usually submitted within the final 24 hours of any comment period) to aid the Board in understanding them prior to a final vote. Given recent expressions of concern by the GAC and individual national governments regarding ICANN's policy process, and particularly the adequacy of explanations of policy decisions, it is particularly important that the Board vote on the final AG be conducted in a manner that demonstrates that all submitted comments have been accorded serious consideration. *ICA (6 Dec. 2010)*.

It would be appropriate to extend the public comment period beyond the current deadline of 10 December 2010. *ccNSO (9 Dec. 2010)*. *E. Brunner-Williams (10 Dec. 2010)*.

Public comment period on Proposed Final Applicant Guidebook (PF-AG) is too short—additional time is requested for public comments. ICANN has only allotted 28 days to the stakeholder community to review the considerable revisions to the PF-AG and analyze all the supporting and ancillary documents posted by ICANN. This is considerably shorter than ICANN's earlier comment periods. *MarkMonitor (2 Dec. 2010)*. *MarkMonitor (9 Dec. 2010)*.

The revisions to the PF-AG are largely driven by the ICANN Board's decision to allow Vertical Integration, a dramatic departure from previous versions of the DAG. If this is the "final" DAG, then ICANN should provide adequate time to the stakeholders and community to enable review and development of substantive comments to this critical document. A longer comment period equaling or exceeding previous comment periods would be more prudent, especially since the Board and Staff have stated that they will evaluate the quantity of comments in relation to previous periods as a measure of support or lack thereof for the PF-AG. *MarkMonitor (2 Dec. 2010)*. *MarkMonitor (9 Dec. 2010)*. *INTA (8 Dec. 2010)*.

The concurrent timing of the Cartagena meeting further constrains the time allowed for comments (impractical for Cartagena meeting attendees to take input from their constituencies gathered at the meeting and incorporate it into comments while meeting ICANN's comment deadline). *MarkMonitor (2 Dec. 2010)*.

The Board is scheduled to meet on December 10, the day the comments are due. It is not possible for staff to analyze the comments, prepare briefing documents and submit them to the Board in the required time frame. The Board requires submission of documents several days before a Board vote on any specific topic. The ICANN Board must take sufficient time to consider the public comments before making decisions about the schedule for the implementation of the guidebook. *MarkMonitor (2 Dec. 2010)*. *MarkMonitor (9 Dec. 2010)*. *INTA (8 Dec. 2010)*. *Microsoft (9 Dec. 2010)*. *BBC (10 Dec. 2010)*.

The BC is disappointed that so many of its concerns about the new gTLD guidebook have been disregarded despite repeated comments by multiple stakeholders. There are repeated instances where the majority of comments call for a change but staff ignores that majority without adequate explanation. BC members are particularly disappointed by ICANN's continued disregard for its concerns about effective RPMs. The current guidebook proposes a substantially weakened version of the tapestry of RPMs initially outlined by the IRT. Consumers and businesses are likely to be harmed by cyber squatting and other fraud likely to occur in hundreds of new gTLDs, especially at the second level. The BC incorporates again its July 2010 comments regarding market differentiation/translations-IDNs/community-based evaluation scoring and RPMs. *BC (6 Dec. 2010). Hogan Lovells (9 Dec. 2010).*

Vertical Integration Decision Process.

The process of getting to the VI decision (which was the correct decision) was messy. The ICANN Board and staff should provide the community and the GAC with clear, written reasons for this decision. *Tucows (8 Dec. 2010).*

The process for the Board's change of position on VI was flawed and no rationale was provided for the decision. *P. Tattersfield (15 Jan. 2011).*

GAC. GAC representatives should understand ICANN as a living process. Problems will be dealt with as they arise. The one thing that is certain is that the problems we expect are unlikely to be the problems we encounter. The ICANN community, including staff and Board, should engage in extraordinary efforts to provide the GAC with information they need in the form they need it in. This is appropriate given the transition to a more global community. *Tucows (8 Dec. 2010).*

Government notification. ICANN needs to outline in what instances government notification would result in denial of an application, and the formal channels that need to be taken to provide such notification and have it taken into account. *CADNA (10 Dec. 2010).*

The proposed final AG is unacceptable. ALAC requests that the critical issues of concern to Internet end users in a number of core areas —e.g., dispute resolution, applicant support, and the independent objector—be addressed quickly so as to minimize delays in the availability of new domains. ALAC also requests that the Board and staff implement ICANN's community process rather than be an obstacle to it. ALAC emphasizes that the role of ICANN staff is to execute the settled policy, not to agree or disagree with it, or indeed affect it at all. The proposed final AG ignores or repudiates almost all of the significant cross-community consensus presented since the last revision; ALAC has serious concerns about the sincerity of ICANN assertions of being a truly bottom-up process and discredits ICANN's claims of increasing transparency and accountability. *ALAC (8 Dec. 2010). P-NPOC (9 Dec. 2010).*

Failure of ICANN process.

An example of a failure of process is that we believe that the summary of the comments of DAGv4 was held back so that staff could update the comments after the Trondheim Board resolutions. What may have been better would be to get the summaries out sooner and then issue a separate summary document after Trondheim giving only the impacted comments and the update rationale. *P. Tattersfield (10 Dec. 2010).*

The new gTLD proposals have been fraught with many process failings by ICANN. For example there have been serious problems with how ICANN handles public input, giving the impression that the public's concerns are ignored when they conflict with a predetermined position. While the new gTLD proposal would be clearly benefiting ICANN and some would-be contracted parties, the potential resulting externalities for innocent third parties are unconscionable. Process failings have been highlighted also in the final recommendations of the Accountability and Transparency review team. *P. Tattersfield (15 Jan. 2011).*

Analysis of Comments

Some comments expressed the view that ICANN had not met its obligations under the Affirmation of Commitments, or that various issues had not been adequately addressed. Section 9.3 of the Affirmation provides that:

ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.

ICANN has performed careful analysis of these issues and taken appropriate steps to meet all commitments. It is important to note that appropriately addressing these areas has always been part of ICANN's work in preparing for the implementation of new gTLDs; these are not new areas that were identified as part of the Affirmation of Commitments.

The New gTLD Program affects diverse groups of interested parties, often with divergent objectives. Positions proposed by some groups in the program will often be opposed by others. The fact that some decisions taken are opposed does not mean that ICANN is not fulfilling its role as described in ICANN's charter documents, the Bylaws and the Affirmation of Commitments. Comments are carefully considered and analyzed in every case, as indicated in documents such as this.

ICANN has also committed to responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied. Several comments expressed a desire to see rationale for decisions made by ICANN. Much of this information has been provided in explanatory memoranda, the analysis of public comment, and, in many cases, the text of Board

resolutions. However, an effort is underway to enhance the reporting of this information. This has already been instituted for the Board meeting of 25 January 2011 and will be refined going forward.

Several comments expressed concern about the 10 December closure of the comment period on the Proposed Final version of the Guidebook. A comment correctly notes that this is shorter than previous comment periods. However, this was based on the history of substantial comment and discussion and the limited amount of new material. Additional reasons cited by comments requesting more time included new information on vertical integration (cross-ownership), the ICANN meeting in Cartagena, and the Board meeting on 10 December. Specifically, comments stated that the Board would not have adequate time to review and consider the comment received during the comment period before making a decision. The Board received updates on public comment received up to their meeting on 10 December, and ultimately, the comment period was extended through 15 January.

Some comments accused ICANN of being in a rush to launch to further its own financial interests. ICANN notes that the implementation process has been characterized by a prolonged dialogue because the program contains so many serious issues where impacted parties need to work together and difficult decisions have to be made. There have been multiple avenues and opportunities for consultation to provide adequate time for issues to be considered and compromises reached. ICANN has made multiple revisions to aspects of the program based on the input of stakeholders and these are reflected in the Guidebook. Given the above history and commitments, it is ICANN's intention to reach resolution on these issues. It would be irresponsible to use community resources to run a process without the intention to see it through to conclusion.

A comment suggests that ICANN incorporate all overarching issues into a "holistic" implementation plan. The four overarching issues of Trademark Protection, Mitigating Malicious Conduct, Economic Analysis, and Root Zone Scaling have been addressed in parallel because, while there is some overlap, the expertise is different and solutions for one do not work as solutions for another. Certainly it is possible to view the impact of measures on another area, and this analysis has been done in the process of community discussions on these issues.

A comment emphasizes that ICANN staff should be executing settled policy rather than ignoring or interfering with consensus. In fact, the settled policy (i.e., the GNSO's 19 policy recommendations) is being implemented as directed by the Board. Other contributions by stakeholder groups, such as advice on implementation models, are indeed considered significant and have been considered at length by ICANN and the community and, where possible, incorporated.

TIMELINE/MODELS

Key Points

- Some commenters support publication of the final Applicant Guidebook to support a launch in May 2011, while other comments support a delay in the timeline stating more time is needed to address open (overarching) issues and minimize adverse consequences, especially in today's economy.
- Applicants for New gTLDs want to see a timeline. If program suffers further delays, it will further harm ICANN's credibility; there should also be consequences for the organization.
- Several comments argue for ICANN to consider a limited and discrete introduction of new gTLDs in the first round in a rational and controlled manner, in order to mitigate risks and maximize the economic and social benefits of the program.

Summary of Comments

Complete final rules. ICANN should write down the final rules of the applicant guidebook in order to be able to achieve the May 2011 opening date for applications. This achievement will undoubtedly contribute to improving community confidence in ICANN's work. *PuntoGAL (7 Dec. 2010). DOTZON (9 Dec. 2010).*

The Board should not allow any further delays and approve the May 30, 2011, application window for new TLDs. *DotGreen (9 Jan. 2011).*

Reliable timeframe. ICANN should expressly state a reliable date for the application period of the next round. This is critical to applicants' business planning. Otherwise some, if not many, applications will not be filed, contrary to ICANN's core value of introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest. *DOTZON (9 Dec. 2010). dotKoeln (9 Dec. 2010).*

Do not pursue a staged introduction of new gTLDs. ICANN should discount pleas for a "me-first" staged introduction of "good" or "unproblematic" or "uncontentious" new gTLDs. Apart from obvious self-interest, it is impossible to know which applications are "good" or "bad" until the applications are submitted and evaluated. The ICANN Board and staff should resist the temptation to pick "better" applications over "worse" ones. Previous rounds have shown that they are not very good at it. *Minds + Machines (10 Dec. 2010). F. Krueger (10 Dec. 2010).*

Fast track for cultural and linguistic gTLDs. Non-controversial Community-based gTLD proposals are being unduly delayed as a result of wider operational and policy development issues that do not concern them. A fast-track window for cultural and linguistic gTLDs will create an environment of trust within the process of implementing a predictable cycle of new TLD application cycles. It will enable applicants to become

operational with minimal risk to the integrity of the broader application process, and will spread the load of evaluating a large number of applicants in a bigger window. This is beneficial for ICANN's operational stability. All ccTLDs seek to respond to a specific need –to strengthen small cultural and linguistic communities. Our communities are, and have been, waiting for ICANN to open the window. We hope we will be able to apply in 2011 for .EUS with no more delays. *dotEUS Association (8 Dec. 2010)*. *dotScot (9 Dec. 2010)*. *ECLID (9 Dec. 2010)*.

A one size fits all approach to new gTLDs is flawed, and by this approach ICANN is missing a huge opportunity to shape the proposed introduction of new gTLDs in the public interest. Without categories the new gTLD framework has to be far more constrained to cover for eventualities many of which have absolutely no bearing on all but one category and therefore introduce needless regulation and complexity for other categories. In a bottom up or consensus driven organization this raises serious concern when it is clear even to the uninformed observer that each different category will introduce markedly different externalities and provide markedly different levels of social benefits. This also leads to the impression that ICANN has been captured by vested interests and that the new gTLD process will be implemented as a one size fits all approach regardless of community concerns. The latest economic study (Phase II) recognizes that different categories of new gTLDs are likely to differ in both their need and the benefits they are likely to provide. The fact that ICANN believes it can enforce a VI Registry/Registrar code of conduct raises serious questions as to the validity of ICANN's assertions that it would be unable to enforce compliance of categories for new gTLDs. *P. Tattersfield (15 Jan. 2011)*.

Creation of a super league--brand TLDs. If .brand is allowed and reinforced worldwide in corporate communications, users will quickly recognize that a brand to the right of the dot is a major player and therefore by implication a brand to the left of the dot will be perceived as a lesser brand. A single layer model to the right of the dot can never replicate the complexities of businesses around the world. While initially appearing to offer more freedom for new domains, it actually offers less. E.g. if there is a ".dell" and ".ibm", the what about a ".hp"? HP is seriously disadvantaged simply because its brand is 2 letters and 2 letters are reserved for country codes. The single layer model offers a system where there can only be one organization to the right of the dot –ever. This is a step backwards from the existing system which by careful management of the competing open generic gTLDs allows multiple totally separate entities to each enjoy a similar level of branding in the second level to the left of the dot. Also, what about organizations that conflict with geographic areas (e.g. .amazon)? Or organizations or brands that share a name with places that may in the future have a need for an internet presence? Or companies whose brands are already taken like .cat? Most importantly, a super league destroys the ability of smaller and medium sized players to compete on a level playing field (due to \$185K application fee and \$25K fee per year needed to enjoy the same level of branding and to enter the super league). For start ups and smaller players the cost of admission to this branding advantage is likely to prove prohibitive. *P. Tattersfield (15 Jan. 2011)*.

Generic names—creation of private monopolies. Similar to corporate .brands, generic names to the right of the dot will come to be perceived as superior (e.g., .news, .shop). Their existence will lead to the creation of a series of individual worldwide monopolies which will be awarded primarily for the benefit of the most economically advantaged. What happens if Microsoft applies for .search? This blurs the DNS framework with the existing entities providing a recipe for consumer confusion to be replicated in every vertical. The award of the .jobs gTLD illustrates the problems with awarding monopoly positions. Awarding a generic TLD in any industry to an applicant based in or controlled by someone in the same industry is game changing compared with the current system which allows numerous individual entities to compete equitably in the second level of open gTLDs and ccTLDs. Trademark law does not allow this advantage to be conferred; nor should ICANN. *P. Tattersfield (15 Jan. 2011).*

If a full consensus cannot be reached about the AGB, ICANN should open an early window for the non-sensitive and uncontroversial cultural and linguistic TLDs, so that they are not further unduly delayed as a result of wider operational and policy development issues which do not concern them. This would be the perfect test for the current community based rules. PuntoGAL is not asking for a specific set of rules to examine cultural and linguistic proposals. No one would be harmed by this early window and all the candidates and ICANN itself would benefit from it. *PuntoGAL (14 Jan. 2011).*

Step by step proposal—early window test. CORE has submitted to ICANN an annex to the step by step proposal offered at an earlier stage of the public comment process. The proposal offers a way to test the system with an Early Window based in both self-selection of the applicants offering the highest level of commitments in the yet-unsolved areas and a blocking mechanism to check that self-selection. The elements are:

- It is not restricted to any pre-defined category; applicants self-select.
- Applicants must provide detailed descriptions on how they specifically address the still-pending overarching issues and they must have an accountability mechanism;
- Each organized group within ICANN will have an opportunity to review the application and if needed to raise a “red flag” effectively blocking the application from moving forward in the Early Window Test. This means that the application is on hold until the final AG and related documents are effectively approved and implemented.

With this mechanism, no one would be worse off than they are today, and some applications would be allowed to move, which would be a significant step forward. *A. Abril i Abril (15 Jan. 2011).*

Discrete, limited rounds.

The June 2010 Economic Analysis recommended continuing ICANN’s practice of introducing new gTLDs in discrete, limited rounds. By contrast ICANN seeks to facilitate a program that foresees an unprecedented 200 to 300 (and up to 1,000) TLDs in a first

round. The apparent discrepancy between advice and action calls for adequate explanation. *WIPO Center (2 Dec. 2010)*.

ICANN should not proceed with a wide-open gTLD program until mechanisms are fully developed and adequately tested to address the numerous concerns that the program raises. If ICANN believes that further delays to the new gTLD program are unacceptable, then it should follow the GAC's most recent advice to conduct a "small pilot programme" for a strictly limited number of gTLDs designed to serve linguistic, geographical, and cultural communities. As the GAC suggests, such a pilot could provide actual data that could be used "to refine and improve the application rules for subsequent rounds." *AIPLA (6 Dec. 2010)*. *U.S. Chamber of Commerce et al. (9 Dec. 2010)*. *dotScot (9 Dec. 2010)*.

ICANN should consider a limited and discrete introduction of new gTLDs in the first round in a rational and controlled manner, limited to community-based gTLDs in order to mitigate risks and maximize the economic and social benefits of the program. This position is receiving growing support in the ICANN community (e.g. GAC, Economic Framework document). *MarkMonitor (9 Dec. 2010)*. *News Corporation (9 Dec. 2010)*.

The Phase II economic report supports the position of AT&T and other commenters that ICANN should introduce new gTLDs in discrete, limited rounds and prioritize introduction of IDNs. *AT&T (10 Dec. 2010)*.

The Ministry recommends a more cautious approach to introducing new gTLDs given that the issue of the economic pros and cons of introducing them to date has not been adequately addressed. The Ministry is concerned that the AG has not undergone sufficient improvements at this stage to serve as a basis for introducing new gTLDs. *Danish Ministry (10 Dec. 2010)*. *R. Fernandez (10 Dec. 2010)*.

ICANN should take an in-depth look at what it is setting forth and realize that a premature launch of new gTLDs puts the business and intellectual property communities at great financial risk. By postponing the launch, it will allow for better analysis of the provisions, most importantly the TMC and the URS. *IHG (Module 5, 10 Dec. 2010)*.

ICANN is in fact recommending in the proposed final AG that it introduce new TLDs in discrete, limited rounds. It can use the experience of this round to make any necessary adjustments prior to future rounds. Due to the process and requirements, this round will be limited in duration to a discrete group of entities that can meet very limiting qualifications. All of the names that are applied for in this round will in practice enter the root in batches or phases over a lengthy period of time. *Domain Dimensions (9 Dec. 2010)*.

Controlled introduction of new TLDs. ICANN should implement fewer new gTLDs than planned. ICANN should divide the applications into groups—e.g., a brand name group, a geo-name group, and a generic group. Both the lesser number of names implemented

and the grouping will make it possible to continuously analyze the benefits and cost to the community. By continuously analyzing small test groups of new TLDs, ICANN can adjust the introduction according to what cost and benefits are experienced with the different groups of TLDs. This will allow ICANN to introduce new TLDs in a controlled way to the benefit of the global Internet society. *DIFO (15 Jan. 2011)*.

Additional time and effort needed for brand owner protection. The IOC agrees with the GAC that ICANN leadership must pay more concerted attention to mitigate the costs of new gTLDs to brand owners. Accordingly, ICANN should abandon its current timeline for the launch of the new gTLD program. *IOC (29 Nov. 2010) AIPLA (6 Dec. 2010). Adobe Systems (10 Dec. 2010).*

Market differentiation. Market differentiation—i.e. working towards a more semantic DNS—must be the way forward to an orderly expansion of the DNS. Anything less will lead to duplicative registrations and user confusion over the long term. *RNA Partners (10 Dec. 2010).*

Analysis of Comments

ICANN has been working toward a timely implementation of the consensus recommendations. The latest timing discussion is in light of the substantial community discussion and formal policy development work that have occurred, and the mission and core values of ICANN. Many of the issues raised that have delayed the introduction are at or near resolution. Specific implementation models to address the potential for malicious conduct and provide trademark protections have been introduced.

The frustration expressed by some regarding the delays for introducing new gTLDs is understood. It is a challenge to balance on one hand the discussions and solutions for important open issues and, on the other hand, the continuing program development and operational readiness. Significant efforts continue to examine and, together with the community, find solutions to these open issues, by discussions such as the upcoming Board- GAC consultations in Brussels.

ICANN continues to approach the implementation of the program with due diligence and plans to conduct a launch as soon as practicable along with the resolution of these issues.

Staff continues to make progress towards the program development and, at the same time, work with the global Internet community towards a level of consensus on the Program's outstanding issues.

Several comments argue for ICANN to consider a limited and discrete introduction of new gTLDs in the first application round. This is what is being proposed: the initial application round is a discrete round with a limited window for submissions, with criteria and procedures established for this round, as detailed in the Applicant Guidebook. It is limited not only by the various requirements but by the maximum delegation rates as

discussed in “Delegation Rate Scenarios for New gTLDs” (see <http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf>).

Various comments suggested prioritization methods for a smaller limited application round, such as community-based applications or those that are “non-controversial.” It should be noted that limited introductory rounds have been conducted previously, and there is no provision in the GNSO policy recommendations for creating a process that prioritizes application opportunities for one type of application over another. Further, development of new rules and procedures for a process with limitations that are fair and effective would be a complex and difficult undertaking – a lesson learned from previous rounds. ICANN would not pursue implementation of a limited application round without clear policy direction for guidance.

COMMUNICATIONS

Key Points

- The four month new gTLD communications plan will include not-for-profits/NGOs as an audience in its outreach.

Summary of Comments

Not-for-profit/NGOs—targeted outreach. The ICANN Board should instruct Staff to include in the four-month communications campaign targeted outreach about the new gTLD program to not-for-profit organizations/NGOs. The information should be about the application process as well as information of interest to third parties who may not be applying for their own new gTLD (e.g., objection procedures, RPMs, and other opportunities to comment on and participate in the process at a policy level). The outreach should also include information about opportunities for Applicant Support. *P-NPOC (1 Dec. 2010). Red Cross (9 Dec. 2010).*

Analysis of Comments

The goal of the new gTLD four month communications campaign is to increase global awareness of the new gTLD program. The communications program will raise awareness among interested parties and applicants worldwide on the *who, what, when, where and why* of new gTLDs. It will address a range of audiences, one of which is non-profits. Our goal is to educate so that interested parties are aware of the program details and things they need to consider, whether applying for a new gTLD or not.

MISCELLANEOUS/OTHER

Whois verification. We have proposed numerous times that all domain names be subject to WHOIS verification (i.e. mailed PIN codes to physical addresses of registrants) to curb abuse. ICANN ignored this proposal. This proposal would have the strong backing of the intellectual property constituencies as well as the support of most legitimate domain name registrants. It should be a precondition to any new TLD expansion. *G. Kirikos (13 Nov. 2010). G. Kirikos (10 Dec. 2010).*

APPLICATION PROCESS

Key Points

- Although a maximum of 1000 delegations per year has been established, the actual delegation rate is expected to be much lower (315-340 per year). An operational readiness plan is in place to ensure that ICANN is prepared for managing the application volume and enforcing the requirements on existing and new TLDs.
- There will not be “volume discounts” in the initial application round. The evaluation fee only covers new gTLD program expenses and not other efforts. It is the intention to gain from the experience of the initial round to hone the fee structure and provide additional aid to certain applicants in the following rounds.
- ICANN would not pursue a limited application round without clear policy direction for guidance. The GNSO policy recommendations do not direct the creation of a process that prioritizes application opportunities for one type of application over another. The development of new rules and procedures for a process with limitations that are fair and effective would be a complex and difficult undertaking – a lesson learned from previous rounds.

Summary of Comments

1,000 new gTLDs per year.

The number 1,000 is still an overwhelming number not only for registrants and the community but for ICANN itself to handle. CADNA would like to know what research/studies were conducted to arrive at and justify this number. The number should be significantly reduced to avoid potential problems (stretched resources making ICANN unable to properly enforce its rules, creating new opportunities for cybercriminals). *CADNA (10 Dec. 2010).*

The guidebook is misleading on the 1,000 per year limit. Despite ICANN’s insistence that the “annual delegation rate” will be limited to “1,000 per year in any case, no matter how many applications are received”, it is ICANN’s stated goal that such a limit will apply for a period of less even than one year, let alone the period of several years that the term “annual” is usually interpreted as referring to. Notwithstanding subsection 1.1.2.3, subsection 1.1.6 says that ICANN’s goal is to launch subsequent application

rounds as quickly as possible, and the goal is for the next round to begin within one year of the close of the initial round. Since subsection 1.1.2.3 has no timeframe attached to it, AGs for subsequent rounds will be able to dictate their own delegation rates and limits, if any limits are to apply at all. Also, the speed with which the second round is intended to start completely prevents any worthwhile examination of the effects of newly delegated gTLDs. *P. Foody (18 Jan. 2011).*

First batch (1.1.2.3). The first batch should be limited to significantly fewer than 500 applications in order to test the operational readiness of newly designed application processing and objection/contention systems. BC is not alone in this call for a more limited, discrete rollout (e.g., GAC, ICANN's recent economic report recommendation). A significant portion of the first batch should be comprised of Community-Based applications. Consistent with its longstanding position that name space expansion should create added-value, the BC supports the concept of non-controversial community TLDs as the optimal way to expand the name space because they create this kind of added-value competition. *BC (6 Dec. 2010).*

Newsfeed or mailing list notification of applications. Section 1.1.2.2 of the guidebook provides that ICANN will post all applications considered completed in batches and the objection filing period for that batch will commence at the same time (1.1.2.4). Given the possible large volume of applications, HKIRC recommends that ICANN provide a newsfeed or mailing list service regarding updates on the applications so that different stakeholders can prepare and file their objections, if necessary, in a timely manner. *HKIRC (22 Dec. 2010).*

Batching methodology (1.1.2.3).

To help applicants plan for the possibility of batch processing it is imperative that ICANN detail the exact method in which batching might be employed. The general descriptions in the AG give little information to applicants as to whether a first to file or similar timing method will be employed. If a first to file or similar method is used, applicants need to know that well ahead of the application window opening. *RySG (7 Dec. 2010).*

The batching methods to be used should be clearly defined prior to new gTLD launch. The method used for batching could materially affect the way in which applicants prepare their respective submissions. *MarkMonitor (Module 1, 7 Dec. 2010).*

Not enough attention has been given to the possibility of ICANN specializing its evaluation process by groups or batches of like-featured applications. *AFNIC (9 Dec. 2010).*

Batches—priority for cultural and linguistic TLDs. If ICANN creates batches for application processing, a community-based candidate should have priority over a commercial proposal. It is evident that proposals developed to achieve commercial profits do not have as much public interest as the ones promoted by cultural and linguistic communities. Many of the commercial proposals are financed by large

corporations, making inclusion in the first batch less critical. On the contrary, PuntoGAL and other cultural and linguistic candidates will find it very difficult to explain to their community supporters that their proposals are still waiting to be evaluated while ICANN examines commercial initiatives which do not have large support among Internet users and will not contribute to improving cultural diversity on the Internet. *PuntoGAL (7 Dec. 2010)*.

Application submission period (1.1.1). Given the long and broad discussion on geoTLDs, a 30-day submission period should be sufficient, especially if the next application window arises a year later. *dotBERLIN (9 Dec.2010)*. *.hamburg (9 Dec. 2010)*. *.GMBH (9 Dec. 2010)*. *AusRegistry (9 Dec. 2010)*. *Domain Dimensions (9 Dec.2010)*. *dotKoeln (9 Dec. 2010)*. *dotBERLIN (12 Jan. 2011)*. *DotGreen (9 Jan. 2011)*.

Fee reduction—IDN scripts and other languages (1.2.10).

ICANN should design incentive mechanisms to encourage the build-out of IDNs and small or underserved languages. One such incentive would be reduction of the \$185,000 application fee for additional IDN versions and translations of the applied-for string. The ICANN Board and staff have acknowledged that some applicant processing costs would be avoided when evaluating additional strings from the same applicant. The reduced fee should be set such that all incremental costs are covered by the applicant and not shifted to other applicants. If the applicant is seeking new translations of a current gTLD, all registrants should have the option to register their second level names in all of the linguistic variations offered by that TLD. *BC (6 Dec. 2010)*.

The aggregate price of a community applicant applying for the same string in different languages and IDN equivalents should be discounted. These applications can be merged under one community application as a bundle. This will cut ICANN's costs. All the information, community criteria, registry technical requirements and financial information will only have to be verified once. The only part that needs to be verified with additional cost allocated is whether the equivalent translated string meets the technical script requirements set forth by ICANN. *dotMusic (10 Sept. 2010)*. *RNA Partners (10 Dec. 2010)*.

Not-for-profit/NGO application fee. The ICANN Board should instruct Staff to establish an evaluation fee/application fee that is appropriate for not-for-profit organizations/NGOs. Fees for not-for-profit organizations should reflect ICANN's actual costs for direct administration of the application process and should not include overhead for other ICANN activities. *P-NPOC (1 Dec. 2010)*. *Red Cross (9 Dec. 2010)*.

Developing countries—fees. It is expected that ICANN will adopt a favorable fee policy for developing countries. Huge fees would stifle the initiative of developing countries to apply for new gTLDs. *Internet Society of China (10 Dec. 2010)*.

Applicant Support Development Program.

The ICANN Board should instruct Staff to initiate the Applicant Support Development Program. It should be announced before the start of the first round. The conditions of the program should be communicated and widely published as soon as possible to allow applicants to benefit from the program during the first round. *P-NPOC (1 Dec. 2010). Red Cross (9 Dec. 2010).*

The Applicant Support program if incorporated into the AG will sharply raise the initiatives of the applicants from developing countries to apply for new gTLDs and promote the balanced development of the global Internet. *Internet Society of China (10 Dec. 2010).*

Board consideration of JAS consensus approach (1.2.10). The Joint Applicant Support Working Group (JAS) has achieved significant consensus on many important issues and is under approval processes at both the GNSO and ALAC. ALAC urges the Board to ensure that its briefings on this matter fully and fairly consider the working group's recommendations. *ALAC (8 Dec. 2010). P-NPOC (9 Dec. 2010).*

Split fees into registration and resolution components. As previously suggested but ignored by ICANN, domain fees should be split. Where a domain name has no nameservers and does not resolve and was bought for defensive purposes then that person should only be charged the registration component and not the resolution component. The total cost for such a domain name would be a lot less. Defensively registered domain names are a source of pure cost to the public, but they are a pure profit center to registry operators and to ICANN. *G. Kirikos (10 Dec. 2010).*

Analysis of Comments

Regarding the expected maximum delegation rates, some comments requested the data used for this analysis. This was published at <http://www.icann.org/en/announcements/announcement-03mar10-en.htm> and at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for public comment.

Some comments expressed that the projected limited delegation rate specifying a maximum of 1000 per year was too high for both the community and potentially for ICANN operationally, and urged adoption of a smaller limit. It should be noted that these limits are in place as a maximum. As described in the papers mentioned above, the actual delegation rate is expected to be much lower. Note also that the operational readiness portion of the project is in place to ensure that ICANN is operationally prepared for managing the application volume and enforcing the requirements on existing TLDs. Based on current conditions, ICANN does not anticipate changes to these projections.

A comment questioned whether the maximum delegation rate was consistent with the goal to launch subsequent application rounds as expeditiously as possible. It is the intention to gain from the experience of the initial round, while avoiding lengthy delays

for the next phase of the program. The Board's resolution on Consumer Choice, Competition, and Innovation (see <http://icann.org/en/minutes/resolutions-10dec10-en.htm>) provided for early development of targets to inform the review called for in the Affirmation of Commitments which takes place after new gTLDs have been in operation for one year:

Resolved (2010.12.10.30), the ICANN Board requests advice from the ALAC, GAC, GNSO and ccNSO on establishing the definition, measures, and three year targets for those measures, for competition, consumer trust and consumer choice in the context of the domain name system, such advice to be provided for discussion at the ICANN International Public meeting in San Francisco from 13-18 March 2011.

In addition, as noted in the delegation rates papers mentioned above, modeling 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.

Various comments suggested prioritization methods for a smaller limited application round, such as community-based applications or those that are "non-controversial." It should be noted that limited introductory rounds have been conducted previously, and there is no provision in the GNSO policy recommendations for creating a process that prioritizes application opportunities for one type of application over another. Further, development of new rules and procedures for a process with limitations that are fair and effective would be a complex and difficult undertaking – a lesson learned from previous rounds. ICANN would not pursue implementation of a limited application round without clear policy direction for guidance.

Several comments requested more detail on the batching process that would be used in the event of a high volume of applications. It should be noted that this is a contingency process and will only be relevant in the event that the volume of applications exceeds what can be accommodated in the process as designed. A process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria.

A comment suggests that ICANN give more attention to "specializing" the evaluation process by groups or batches of like-featured applications. We agree. This is contemplated to gain efficiencies in the process while allowing a fair and consistent evaluation across the set of applications.

A set of commenters suggested that the application submission period should be 30 days. ICANN has not established the length of this period; however, it is expected that it the necessary steps leading up to and including the submission of an application will take some time to complete. ICANN's intention is to ensure that the time period is sufficient for applicants to provide appropriate attention to these steps. The application period will be at least 60 days and no longer than 90 days.

Some comments suggested inclusion of means for “bundling” of applications for scenarios such as IDN variants or translations at discounted evaluation fees. ICANN does not expect to institute bundled application pricing for the reasons previously articulated. While there are efficiencies in the evaluation process that can be gained where an applicant applies for multiple strings, these have already been factored into the establishment of the financial model. Giving preferential pricing for bulk applications on such bases is not contemplated in the GNSO policy recommendations, and implementing such a suggestion would not be a straightforward exercise. It should be recalled that there is not a one-to-one mapping to determine what is and is not a variant or an exact translation of a string: this would add considerable complexity to the process. As has been noted previously, the level of uncertainty and risk is highest in the opening application round.

A comment also suggested bundled prices for second-level domain names in new gTLDs. It should be noted that procedures for second-level registration is a matter of policy established by the TLD operator.

A comment suggests establishing special fees for non-profit organizations/NGOs, and that states that fees should reflect actual costs rather than overhead for other ICANN activities. The established fee level covers the cost of operating the program, the program development costs, and allocates some funds for addressing the uncertainties. These costs include direct overhead but not costs attributable to other ICANN activities. The processing steps and associated costs to perform each application evaluation are based on an average number of steps to complete each application and do not change based on the TLD type or organization applying. Consequently, the current application fee is not expected to change for the initial application round. However, as stated previously, it is anticipated that subsequent application rounds will enable adjustments to the fee structure based on historical costs from previous rounds, the effectiveness and efficiency of the application evaluation process, and other data as it becomes available. Fee models can be re-considered for subsequent application rounds.

Every effort has been made to keep the evaluation fee as low as possible within the constraints of operating a responsible program. Recognizing that there are needs in developing countries, a working group comprised of representatives from various Internet constituencies is evaluating options for providing support to a defined set of applicants. The group is currently working on refining recommendations included in its latest report (see <http://www.icann.org/en/topics/new-gtlds/jas-milestone-report-11nov10-en.pdf>). Many comments were received in support of the work of this group. The group is a cross-SO/AC working group and is making important recommendations on how various types of applicant support could be implemented in the program; however, it should be clarified that this group is not following a policy development process.

A comment suggests that domain name registration fees should be structured so that a “purely defensive” registration that will not be used costs less than registering a domain name that would resolve to a working website. Prices for domain name registration are

generally at the discretion of the registry according to the model and its registrant base. The current registry agreements specify that consensus policies shall not prescribe or limit the price of registry services. This model has merit and has been discussed in the development of rights protection mechanisms. However, it would require considerable work to define a purely defensive registration. There are “defensive registrations” now where the registrant derives financial or other benefit. Defensive registrations may act as “parking pages” from which point-and-click revenue is derived. Other defensive registrations point to main web sites, increasing traffic to that web site.

One comment suggested that ICANN provide a newsfeed or mailing list with application status updates. It is the intention that updated status for all applications will be available via ICANN's website, in a format that makes the information easily accessible. A newsfeed could be a useful addition to this and is being considered as a mechanism to communicate this information.

EVALUATION

Key Points

- There are a number of challenges with providing the names of directors, officers, partners and controlling shareholders of new gTLD Applicants. While there may be some incremental gain for specific applications in providing such information, the challenges of processing the public comments as well as ensuring a consistent process for all applicants are expected to outweigh potential benefits gained.
- In cases where consideration of the comments has impacted the result of the evaluation, the evaluators would seek clarification from the applicant.
- The evaluation question on security is designed to elicit a detailed description from the applicant of the security policies and procedures that will be employed in the TLD. Comments requesting clarification on various aspects of this question and criteria are currently being considered for the revision of the Guidebook.
- ICANN in general defers to the IETF on matters such as TLD string syntax.

Summary of Comments

Role of public comments (1.1.2.5). The AG provides no methodology for Independent Evaluators (IEs) to weigh public comments in their evaluation of an application. How they factor in public comments could materially affect the outcome for an applicant. The AG provides no explicit opportunity for the applicant to rebut such public comments. The AG should define the clear methodology that IEs will use to weigh public comments in the evaluation of an application. The AG should allow an applicant an explicit rebuttal opportunity, allowing an applicant to review comments filed “against” its application, for

a period of no more than 5 days. The shortness of the reply comment period is to allow the application in question to remain “on schedule.”

Clarification is needed on whether comments and reply or “rebuttal” comments will affect the timing of evaluation (i.e. will the application’s place in line be affected and if so what criteria will be used to establish the new place in line?)

Experts should not be permitted to consider evidence and arguments outside the confines of the objection proceeding and the papers submitted by the parties thereto. It would be against fundamental fairness to consider extraneous evidence. This should apply regarding 1.1.2.5 (evaluators) and 1.1.2.7 (dispute resolution providers—the third paragraph says “[p]ublic comments may also be relevant to one or more objections grounds” and “DRSPs will have discretion to consider them”).

RySG (7 Dec. 2010). DOTZON (9 Dec. 2010). dotHOTEL (10 Dec. 2010). dotMusic (10 Dec. 2010).

Use of comments in string contention (1.1.2.8). RySG is concerned about the language providing that in the event of a community priority evaluation (module 4, string contention procedures) ICANN will provide the comments received during the public comment period to the evaluators with instructions to take the relevant information into account in reaching their conclusions. ICANN should define what “relevant” is. Also, this language could be interpreted by some that in order to score higher in the community evaluation that thousands of comments need to be generated on behalf of the application. Clarifying language should stress that while breadth of support may be a factor, quality of comments trumps waves of form comments. *RySG (7 Dec. 2010). dotBERLIN (9 Dec. 2010). .hamburg (9 Dec. 2010). DOTZON (9 Dec. 2010). .GMBH (9 Dec. 2010). dotKoeln (9 Dec. 2010).*

Length of comment period. The initial comment period is 45 days but open to extension. Who makes the determination that a comment period will be extended and what criteria will be used? *RySG (7 Dec. 2010).*

Community-based designation—definitions (1.2.3.1). The phrase “appropriate security verification procedures” requires clarification, particularly given the status of the HSTLD working group (i.e., how will “appropriate” be measured, what standards will be used?) *RySG (7 Dec. 2010).*

Legal compliance (1.2—Information for all applicants).

Removal of the word “terrorism” from the latest version of the AG is to be commended, but it was replaced by the “Legal Compliance” paragraph on page 28 which invokes the U.S. Treasury’s OFAC and SDN lists to carry out a screening of applicants from all corners of the world against U.S. laws and requirements. In essence this means that only the English and IDN new gTLDs and their applicants that the U.S. government and its foreign policy say are okay will be permitted. This could potentially cause breaking

the single root of the Internet, needlessly alienating and instigating sovereign nations to start considering not only the option of boycotting ICANN's new gTLDs but also prompting them to consider alternatives to the ICANN root and its version of Internet governance. ICANN and all concerned parties need to assess the manner in which this has been handled. *Multilingual Internet Group (10 Dec. 2010)*.

The new Legal Compliance paragraph in the guidebook should be eliminated. Also, ICANN should reconsider its direction and address the problem of being accountable to only a single government. Even removal of this new paragraph does not remove ICANN's ultimate accountability and responsibility to only the US government (AoC) being a California corporation.

- The new Legal Compliance paragraph brings back the critical concerns of many sovereign nations over the control of a single country over today's Internet. It also introduces serious problems for many to-be gTLD operators and sovereign nations who will find such terms unacceptable to permit themselves or their citizens to take part in said new gTLDs while subject to the laws and political conditions of only one government.
- It also risks the technical stability of the whole Internet and its unique identifiers. In the aftermath of the website shutdowns by the Immigration and Customs Enforcement (ICE) Agency of the U.S. government, someone is calling worldwide ISPs to set up alternative DNS roots. ICANN as a U.S. non-profit corporation is subject to the ICE at any time even for putting down a TLD.
- Most importantly this new direction is reminding many sovereign, independent nations and local communities that today's Internet is under the supreme control of the U.S. government through ICANN and IANA contracts and that these nations need to accept foreign controls over their sovereign territories in being able to operate TLDs in ASCII or IDNs in their local languages. E.g. a number of expected new gTLD applications will come from communities and municipalities that maintain autonomous sovereignty which will not accept being governed in their territories and jurisdiction by the laws of another (single) nation, nor participate in the objection process.

A. Al-Zoman (1 Jan. 2011). Arab TLD Committee (Module 1, 16 Jan. 2011).

Legal compliance. ICANN's codification of its continued compliance with U.S. law into the text of the AG is to be applauded. The "Legal Compliance" paragraph should remain unaltered in the final approved version. ICANN is and has always been a non-profit corporation chartered in the U.S. and thereby subject to its laws. It is disingenuous to argue that the Legal Compliance paragraph in the proposed final AG is an example of "control" by the U.S. government. Arguments conflating ICANN's legal compliance with the laws of its country of incorporation with any overarching political considerations are misguided and detrimental to the continued development of ICANN as a multinational entity. *Lawfare Project (13 Jan. 2011)*.

Awareness of gaming. ICANN should make the dozens of evaluators aware that there will be attempts to game the AG rules to get advantages against competitors or get a TLD approved. Fake communities, hired objectors, brand look-alikes and squeezing out may be some of the many possible scenarios. *dotBERLIN (12 Jan. 2011).*

General Business Diligence and Criminal History (2.1.1).

MarkMonitor recognizes and appreciates the special consideration that entities traded on the top 25 exchanges are granted with regard to background due diligence but questions why this is the only special consideration made to rights owners. *MarkMonitor (Module 2, 7 Dec. 2010).*

Hogan Lovells welcomes this provision. *Hogan Lovells (9 Dec. 2010).*

Reliance entirely on stock exchanges' due diligence of officers and directors backgrounds is misplaced. ICANN should at least do a nominal check on publicly traded companies. *IPC (9 Dec. 2010).*

History of cyber squatting (2.1.2).

Screening of applicants against UDRP and legal databases is not an effective measure for determining cyber squatting. An overwhelming amount of cyber squatting is never disputed and would be missed by this approach. MarkMonitor recommends that an independent firm conduct investigations to uncover patterns of abuse in addition to using UDRP and legal databases. MarkMonitor also recommends that during the impending review of the UDRP that ICANN consider creating a consolidated data store for complainant, respondent, decision and other important data to make this process effective. *MarkMonitor (Module 2, 7 Dec. 2010).*

Microsoft is pleased that ICANN set the threshold for cyber squatting disqualification at 3 or more decisions with one occurring in the past 4 years. *Microsoft (9 Dec. 2010).*

Hogan Lovells supports this provision and to balance it would suggest adding that any entity or person that has been involved in a pattern of Reverse Domain Name Hijacking by any UDRP provider would also be banned from applying. *Hogan Lovells (9 Dec. 2010). ICA (9 Dec. 2010). S. Barclay (10 Dec. 2010).*

The proposed treatment of cyber squatting is imbalanced in that there is no new gTLD eligibility prohibition regarding complainants who regularly abuse the UDRP process. The background check criteria should be further amended to bar any individual or business entity that has lost a percentage or number of UDRP decisions from being eligible to be a new gTLD applicant. *Worldwide Media (10 Dec. 2010).*

Cyber squatting disqualification criteria (1.2.1).

ICANN should expand the disqualification criteria (k) to apply to affiliates or subsidiaries of the applicant. As currently drafted the cyber squatting disqualification applies only if the applicant or named individuals were involved. Cyber squatting has been documented at affiliates and subsidiaries of the registrars and registries who are likely

to be applicants for new gTLDs. *BC* (6 Dec. 2010). *Microsoft* (9 Dec. 2010). *CADNA* (10 Dec. 2010).

It should be clarified in 1.2.1 that the decisions of concern are adverse decisions; the phrase “involved in” is unclear. Also, the decisions of interest should be final decisions. Both of these problems can be resolved using the phrasing “adverse, final decisions.” Also, the grammatical error “in of” in subsection k should be corrected. *J. Berryhill* (9 Dec. 2010).

Section 1.2.1(k) should be amended to treat as equally disqualifying a pattern of abuses of the UDRP or litigation in attempts to take domain names from legitimate registrants (i.e., amend to “has been found liable for a pattern of abusive or bad-faith behavior, namely cyber squatting or reverse domain-name hijacking, as defined in the UDRP, ACPA, or equivalent legislation”). Also because this measure adds new consequences to old findings, applicants may not have had adequate incentive to challenge default or erroneous judgments in the past. Applicants should be permitted to explain the circumstances of those rulings and on good showing to exclude such findings from consideration. A determination of “pattern” should be based on the totality of the circumstances. *W. Seltzer* (10 Dec. 2010).

Cyber squatting history—definition is rigid and inequitable. The new definition in the proposed final AG is problematic and should be modified. Denying an entity the opportunity to operate a gTLD because of 3 (adverse) UDRP decisions is an extremely broad standard which will unintentionally disqualify otherwise qualified applicants.

It does not allow for contextual analysis in terms of a “pattern” (i.e. it is difficult to conclude that an entity has engaged in a history/pattern of cyber squatting when they own hundreds or thousands of domain names and have lost a few UDRP or similar proceedings).

There appears to be no language in this new section allowing analysis of whether the entity acted in bad faith or repeatedly attempted to abuse trademark rights in the past—it is just a matter of whether they lost three or more UDRP cases. In addition, imposing this unrelated ex post facto sanction to bar applicants for new gTLDs was not contemplated by the UDRP process. This is draconian and results in a retroactive change in the legal consequences of all UDRP decisions. By analogy, just because a company loses several contested patent, copyright or trademark infringement cases does not prohibit that company from ever applying for their own patent, copyright or trademark in the future.

Further, the proposed language is not clear on what constitutes cyber squatting. Since there is no “universal” definition of cyber squatting is any “decision” (presumably negative) under the general definitions of the UDRP, ACPA and other national laws considered cyber squatting?

ICANN should not be seeking to exclude an applicant for anything but serial/egregious IP violations. ICANN should revert to the DAGv4 definition of “bad faith in regard to domain name registration” (a-d) and with this utilize a definition of history or pattern of cyber squatting that does not involve a specific number but rather is closer to a “customary way of operation or behavior” which allows for a contextual analysis for each applicant.

Demand Media (8 Dec. 2010). ICA (9 Dec. 2010). Worldwide Media (10 Dec. 2010).

A more reasonable approach would give credit to domain holders for UDRP wins (plus 1 for wins, minus 1 for losses, with a percentage of total domain ownership as the baseline for determining abuse (e.g. the disqualifying mark could be a 1% net loss rate compared to the total of domains registered). *Worldwide Media (10 Dec. 2010).*

A UDRP loss that has been reversed upon appeal to a court of proper jurisdiction should not be counted against an applicant. *ICA (9 Dec. 2010).*

ICA has provided (in an attachment to its comments) amended language for the text of Section 1.2.1 (Eligibility) to implement these changes:

- Criteria for automatic disqualification for cybersquatting. A stipulation that 3 or more final, adverse UDRP or judicial decisions against an applicant for cybersquatting must be the majority of such decisions rendered against an applicant to constitute automatic disqualification. This refinement of the test only goes to the criteria for automatic disqualification, and would not eliminate ICANN’s discretionary powers to bar a particular applicant from being associated with a new gTLD. *ICA (15 Jan. 2011).*
- “Final” decision scope. Clarification that an adverse UDRP decision that is subsequently reversed under applicable national law, or that has been the subject of post-UDRP settlement in which the complainant acknowledges that the registrant had not engaged in cybersquatting, is not a final decision and should not count for purposes of the automatic disqualification test. *ICA (15 Jan. 2011).*
- Automatic disqualification for reverse domain name hijacking. A new item 1 specifying that an applicant found by UDRP panelists to have engaged in 3 or more attempted reverse domain hijackings (RDNH) with at least one occurring in the last 4 years, should also be automatically barred. *ICA (15 Jan. 2011).*

String similarity review (2.2.1).

ICANN did not respond to RySG’s comments on AGv4 that the focus should be on a good user experience and that there may be instances where strings are judged to be similar but in a non-detrimental way. In those cases rather than eliminating those strings in the initial evaluation there should be opportunity for correcting the possible error. It is very possible that two strings could be similar but not create confusion and instead provide for a better user experience. A legalistic application of string similarity requirements that does not take into account the user experience would be an unfortunate mistake. *RySG (7 Dec. 2010).*

While the proposed final AG provides a definition that “similar” means strings so similar that they create a probability of user confusion, additional clarification is required in the form of examples. E.g., will .bank and .banque all be considered similar? 3-letter TLDs where this is only a difference of one letter? Will .eco be too similar to .co or .com? Given the significant investment required to apply for a new gTLD, understanding where potential contention may exist is of utmost concern to potential applicants. *MarkMonitor (Module 2, 7 Dec. 2010)*.

String Requirements (2.2.1.3.2). Prohibiting inclusion of hyphens or digits in the string represents a significant change in approach; further explanation as to why this change was made should be included in the proposed final AG. *MarkMonitor (Module 2, 7 Dec. 2010)*.

Single character IDN TLDs. HKIRC echoes and reiterates the positions of the Draft Final Report on Policy Aspects Regarding Introduction of Single Character IDN TLDs by the joint ccNSO and GNSO IDN working group on the matter of single character IDN TLDs. As innumerable single Chinese characters are meaningful in themselves, single character IDN TLDs should be acceptable, but must not be confusingly similar to single or two character ASCII TLDs. The requested single character IDN TLD strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and the language. *HKIRC (22 Dec. 2010)*.

Reserved names—Olympic trademarks. The International Olympic Committee (IOC) has filed numerous comments opposing the new gTLD program and also requesting that if ICANN nonetheless moves forward to launch an unlimited number of new gTLDs, then the Olympic trademarks should be placed on a reserved names list. To date, the IOC has received no response from ICANN regarding this request. Numerous precedents support a special level of protection for the Olympic trademarks. The IOC reiterates that the Olympic and Olympiad trademarks belong on both the top level reserved names list (Guidebook Module 2.2.1.2) and the second-level reserved names list (Registry Agreement Specification 5). To be clear, placement on these lists is unrelated to the Globally Protected Marks List or the Trademark Clearinghouse. The IOC and its National Olympic Committees are committed to working with ICANN and the GAC to implement a reserved list of Olympic trademarks that ensures non-commercial free speech is not negatively affected. *IOC (29 Nov. 2010)*.

Reserved names—regional ccTLD organizations (2.2.1.2). The following suggestion, offered in the past round of comments, was not taken by ICANN and is renewed here: The four regional organizations of ccTLDs (AfTLD, APTLD, CENTR and LACTLD) should be added into paragraph 2.2.1.2 like reserved names. Like ARIN, LACNIC, AFRNIC, RIPE and APNIC, for IP numbers the regional organizations of ccTLDs are involved directly in the process of ccTLDs and ICANN. The four regional organizations have liaisons in the ccNSO Council and participate in different working groups and are recognized by the community. *E.I. Ahon (13 Nov. 2010) citing E.I. Ahon (Module 2, 17 June 2010)*.

Reserved names—Red Cross. In light of treaty protections and legislation and with due consideration to the important work of the Movement, Red Cross requests that the Board include the terms RED CROSS, RED CRESCENT and RED CRYSTAL (and any other terms that may be later protected by treaty or legislation) in: (1) the globally recognized reserved names list referenced in the AG (e.g. in 2.2.1.2); and (2) the globally recognized second level reserved names list provided in Specification 5 of the Registry Agreement. Red Cross asks that Staff be instructed to work with ICANN’s TMC provider(s) and not-for-profit organizations/NGOs to develop a reasonable system for adding the names of not-for-profit organizations/NGOs, as well as the trademarks owned by these organizations, into the TMC databases described in appropriate sections of the AG. *Red Cross (9 Dec. 2010).*

Top level reserved names. The string requirements for gTLDs (section 2.2.1.3.2) have been compiled with recognition of the revisions to RFC 1123 in draft form: <http://tools.ietf.org/html/draft-liman-tld-names-04>. However the section 2.2.1.2 list of top level reserved names includes GTLD-SERVERS, IANA-SERVERS, RFC-EDITOR, ROOT-SERVERS. These names are not valid ASCII TLD labels according to the draft RFC. The hyphens in these names are not part of the allowed character set defined by the token ALPHA. *D. Sayers (Module 2, 30 Nov. 2010).*

Reserved names—not-for-profits/NGOs. The ICANN Board should consider requesting an Issues Report on the feasibility of adding the names of not-for-profits/NGOs to the Reserved Names list, working with these groups to develop reasonable criteria for inclusion in that list. *P-NPOC (1 Dec. 2010). Red Cross (9 Dec. 2010).*

Security policy (Evaluation question 35).

Applicants should be required to indicate specific security standards they intend to apply to their registry operations and their entire chain of control for registrations. Specific information will allow evaluators and potential objectors to assess TLD applications that call for higher security, such as those targeted to financial and e-commerce users. *BC (6 Dec. 2010).*

BITS is pleased with and supports the inclusion of amended question 35 in the AG. *BITS (9 Dec. 2010).*

ICANN should be more specific with the community as to what their standards are regarding the security measures put into place. *CADNA (10 Dec. 2010).*

Question 35 appears from “out of the blue.” It has no prior existence in any prior DAG and represents a display of narrow, destructive advocacy work by some party with more access to ICANN than others.

- Security is not a defined term and therefore applicants and their evaluators cannot predict evaluation outcomes.
- The specific controls, HSTLD’s current work product in particular, or ISO 27001, are not yet known to have any causal relationship with registry operational art,

and the scope of registry operational art any candidate control could in theory affect is not yet known to be materially significant to the secure operation of a registry.

- “Full interplay of business and technical requirements” is not a quantitative property, and it is doubtful that it is a quantitative property.
- Does “on hand or committed” include mutual assistance agreements or cooperative agreements with OARC or CAIDA or CERTS or similar centers of excellence?
- The “fails requirement” term should be changed to “does not attempt the (still partially defined) feature set.”
- The language of question 44 should be seen for features that are optional at time of launch.
- At a minimum, the “criteria” associated with, and the scoring value of “2,” should be removed from the DAG.
- All reference to the HSTLD should be removed from the DAG, as the HSTLD-AG has consensus that its work product not be referenced, let alone incorporated, into the DAG.
- The “fail” language should be changed to reflect some criteria “not attempted” rather than “failure”, and the feature set should be optional at the time of launch (and so possible at a later point in time).

E. Brunner-Williams (Module 2, 11 Jan. 2011).

Financial gTLDs—security standards. BITS is aware that liability issues have forced ICANN to forgo the direct management and enforcement of a high-security zone standard. BITS requests the addition of the following language in the scoring section for question 35 of the TLD application (at pages A36-38). This language could be inserted as the last sentence of element 5 (requiring security measures commensurate with the nature of the applied-for string): “*Evaluators will use standards published by the financial services industry to determine if the applicant’s proposed security approach is commensurate with the level of trust necessary for financial services gTLDs.*” Inclusion of this language, and the use of a single, defined set of security standards, should provide helpful guidance to both applicants and evaluators of proposed financial gTLDs. *BITS (15 Jan. 2011).*

Financial gTLDs--security standards independent working group. BITS intends to form a working group dedicated to the publication of security standards commensurate with the nature and use of financial gTLDs. *BITS (15 Jan. 2011).*

- Membership will be global in nature, enlisting participants from financial regulators and standards-setting organizations in addition to representatives from financial institutions. The group’s goal will be to produce a standard set of controls that would be required of all financial gTLD operators. *BITS (15 Jan. 2011).*

- BITS will publicly release a terms of reference for the working group and provide periodic public updates. BITS plans to work with ICANN staff to provide information for use by the ICANN community regarding this working group and can provide briefings and working sessions at ICANN meetings or elsewhere as appropriate. *BITS (15 Jan. 2011)*.
- BITS intends to publish the final elevated security standards for financial gTLDs on behalf of this independent and international working group. BITS will notify the broader financial services community about the pending security standards through an international trade publication or similar method. Final publication will include comments explaining the rationale for each standard. BITS expects the product to be used by the ICANN application evaluators, and plans to seek validation from an appropriate global standards-setting organization. BITS will ask financial regulators to confirm that the standards meet or exceed national and international safety and soundness regulations. *BITS (15 Jan. 2011)*.

Recommended first character for a gTLD string. Attention is called to a potential problem with the issue of gTLDs under the 63 character with only one letter parameter (i.e. 62 zeros and an A). ICANN should stipulate that the first character in the gTLD string must be a letter. If this is the case, then I will file a formal expression of interest and application for the .A0 (dot a zero) gTLD to be used as a worldwide geographically organized Internet domain directory composed of single page basic contact information websites separated into personal, government and business sections in the same format used by the now obsolete printed phone book. It would be appropriate for the gTLD at the top of any alphabetically organized lists of gTLDs to be an index of domain names. I would allow any individual, organization, government, agency, institution or business to link to their proprietary .A0 directory index listing and redirect traffic to their main website or whatever destination url they wish. The Internet needs a simple, static, coherently organized table of contents that does not depend upon the best optimization program or the highest cost per click or the number of links to the most currently popular social site. It is common sense that the first or top gTLD should be the directory of domain names. *M. Moore (3 Dec. 2010)*.

UDRP Losses—Effectiveness of Three Strikes Policy. Are the current rules “bulletproof” to prevent registrars who have lost UDRP decisions on multiple occasions from applying for new TLDs? The draft language on 1-18 has a huge loophole which would not appear to catch registrars where a party with the UDRP losses is not the registrar itself but a shell company (e.g., GoDaddy involved with domain name warehousing under a company called “Standard Tactics LLC”; and it appears highly likely that “Demand Domains” which has lost numerous UDRP cases is related to the registrar Demand Media/eNom). The following steps should be undertaken:

- (1) There should be an independent study on the extent of cyber squatting by registrars and their related companies, looking at UDRP losses and the PACER system in the U.S. and also seeking the public’s input. A deeper investigation should also “pierce the veil” of WHOIS proxy services to unmask the true clients

to determine if they are being used to hide the cyber squatting activities of registrars.

(2) The guidebook should be corrected to ensure that the intent of preventing cyber squatters from applying for TLDs is matched by the actual language (i.e. remove the loopholes that permit cyber squatting from related companies);

(3) Address the issue of what is the acceptable “standard” to be a registrar--i.e. why would ICANN disqualify certain parties from being TLD operators but wink and allow those same parties to be registrars without any penalty whatsoever?

G. Kirikos (14 Nov. 2010).

Financial services definition—technical amendment. The word “typically” should be added after the word “activities” and before the word “performed” (“financial services are activities typically performed by financial institutions...”) This change ensures that an applicant seeking a financial services TLD will adopt security measures capable of protecting consumers without regard to the applicant’s status as a financial institution. *BITS (9 Dec. 2010).*

Financial projections (Question 46, template 1). This is written as though the applicant will be building and operating the technical infrastructure itself, but some applicants will use third party registry operators as a back end for certain aspects. It is recommended therefore that ICANN adopt a second template optional for the applicant that would allow it to identify and bundle its outsourced costs. Alternatively, a second Sample Financial Template based on an outsourced registry solution that showed how the evaluators would like to see the outsourced services inside Template 1 would be helpful. *B. Fausett (9 Dec. 2010).*

Linkage of applications. The Application should allow an applicant to identify and link additional, related applications. This will also allow explanatory notes inside the Financial Projections about shared revenues and costs across all applications. *B. Fausett (9 Dec. 2010).*

String requirements. Significant changes in the proposed final AG raise concerns. By using a draft IETF document which has no clear consensus, a number of domains which are technically allowable (i.e. allowed by the protocol) will no longer be allowed as TLD strings. Section 1.2.1 disallows the use of numbers and hyphens in ASCII TLDs. This disallows TLDs such as .3com, a large corporate brand. If the concern is with rendering issues experienced by names that contain numbers at the boundaries, and right-to-left (RTL) IDN labels, it is already adequately addressed by the IDN BIDI rules in the IDNA RFCs. *AusRegistry (9 Dec. 2010).*

Bullet point 5 of section 1.3.1 should be required of all applicants that intend to allow registration of IDNs under their TLD to adequately address any concerns with rendering issues. Alternatively a rule could be made that RTL registrations are not allowed under TLDs (IDN and ASCII) that begin with numbers. There is also no reason to disallow

dashes; the language in previous DAGs was sufficient to address any potential issues with them. *AusRegistry* (9 Dec.2010).

In Section 2.1.2 the rationale for restricting only to PVALID is not clear. No string should be denied under this section as “it might not work in applications” scenarios are already prevented. *AusRegistry* (9 Dec. 2010).

The effect of Sections 2.1.3 and 2.1.5, restricting to the listed codepoint categories and to only one directional property, is to prohibit a large category of new gTLDs (Arabic IDNs) for no technical reason. *AusRegistry* (9 Dec. 2010). *AusRegistry* (10 Dec. 2010).

Anonymity of applicants. While ICANN will still conduct a background check on applicants, it has made a change to the process that effectively cuts the public out of that process by removing from public disclosure all information about directors, officers, partners, or controlling shareholders of new gTLD applicants (see attachment A to module 2, item 11, applicant background—“N” signifying no public posting). It may be reasonable for some of the contact information on new TLD applicants to be withheld from public disclosure, but this total information blackout extending even to the names of officers, directors, partners or controlling shareholders of applicants, is completely new to the process, completely unjustified and completely inconsistent with the transparency and accountability with which ICANN should operate the new gTLD system. *COA* (3 Dec. 2010). *IPC* (9 Dec. 2010). *RIAA et al.* (11 Jan. 2011).

Treat all applicants the same. The current background check provision would operate unfairly (e.g. cities having to perform a complete background check for their city TLD applications while stock market-listed companies are exempted). Two options for avoiding this are: Option 1—all applicants must be evaluated and pass through the background check the same way regardless if they are an SME, a global top 100 company, an honorable foundation or a government; or Option 2—Exempted from the background check are a government, a governmental body, a government-owned organization (e.g. company, foundation, association) or where the government is directly or indirectly shareholder of the applicant. *dotBERLIN* (12 Jan. 2011).

Analysis of comments

Role of Public Comment (Application Comments)

Some comments contained requests for more detail on the role of public comments in the evaluation process. In particular, some parties suggested that an applicant should have an opportunity to “rebut” public comments received on the application. Note that an applicant is free to respond to comments received in the public comment forum at any time. In a case where consideration of the comments has impacted the scoring and result of the evaluation, the evaluators would seek clarification from the applicant.

A comment suggests that public comments should not be considered by an expert dispute resolution panel in the case of a proceeding based on an objection. This

suggestion is problematic: it would not be possible or desirable to restrict a panel from considering publicly available information. Note that in the case of a community objection, for example, expressions of support and opposition are one of the factors considered by the panel, and this could include consideration of relevant public comments.

Some comments expressed concern with the use of public comment by the panel in the case of a community priority evaluation. Essentially, these suggested that the public comment forum would invite floods of comment in support of or opposition to an application in an attempt to influence the panel's consideration. Module 4 of the Guidebook states that: "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, or filed for the purpose of obstruction will not be considered relevant." ICANN agrees that the public comment forum should not be used as a mathematical polling mechanism and that the instructions to the panel will make clear that quantity of comments is not in itself a deciding factor. The Guidebook is being revised to clarify this point in the area of support as well as opposition.

A comment asks under what circumstances a comment period would be extended. This decision would be made by ICANN if required by the volume of applications (i.e., if the processing times are extended in accordance with section 1.1.2.3) or other circumstances require. It would not be possible to specify every circumstance where such would occur.

Security Question and Criteria

Some comments focused on previous revisions to Question 35 (Security Policy) in the evaluation criteria. Commenters requested clarification on how an appropriate level of security would be determined in the case of a string with unique trust implications. Clarification was also requested on the details of specific security standards. The question is designed to elicit a detailed description from the applicant of the security policies and procedures that will be employed in the TLD. The Guidebook is being revised to incorporate these comments.

One comment states that the edits made to the security question and criteria for the Proposed Final version of the Guidebook appeared from "out of the blue." This is not the case: the changes are similar to language published in <http://www.icann.org/en/topics/new-gtlds/draft-evaluation-criteria-30may09-en.pdf>. This approach has been previously considered as one means of addressing concerns that different security expectations might be in place for various TLD models.

A comment notes that security is not a defined term and thus the question contains significant uncertainty. It is understood that security means different things to different people. Here, "security" is defined by the questions and criteria in the Guidebook. The revisions of the Guidebook attempt to clarify the areas covered in this question. This comment also suggests that some of the terms used in the criteria are not sufficiently

quantitative. The criteria are written to be as objective as possible, though purely objective criteria are not always effective because business models and security requirements vary across proposed TLDs.

The HSTLD framework is still theoretical and this is acknowledged in the Guidebook. The evaluation criteria for the security question are structured so that there is room for this or other types of security certification levels to be accommodated if developed in the future. One comment suggests that ICANN commit to using standards developed by the financial services industry, and notes that formation of a working group dedicated to this area is pending.

A comment questions whether resources “on hand or fully committed,” as used in the evaluation criteria could include mutual assistance or cooperative agreements with various entities. The answer is yes, if they included evidence of commitment of resources, then these agreements could be used.

Some comments suggested edits to question 35 (Security Policy), to offer clarification that the requirement for a level of security that is commensurate with the nature of the applied-for string would not only apply to financial services TLDs, or to explain that this requirement does not relate only to financial institutions that might apply. Clarifications to this language are being developed in the revision of the Guidebook and ICANN is working with the financial services sector, which is developing criteria for what they define as financial services TLDs.

String requirements

Some comments questioned the changes made based on the revisions to RFC 1123 currently underway in the IETF. These comments seem to be concerning the draft (see <http://tools.ietf.org/html/draft-liman-tld-names-04>) rather than the Guidebook. There appeared to be different interpretations of RFC 1123, highlighting the need for clarification. As stated in the draft, the syntax for allowed TLD labels in the DNS is not clearly applicable to the encoding of IDNs as TLDs.

Thus, the revisions to RFC 1123 are intended to provide a concise specification of TLD label syntax based on existing syntax documentation, extended minimally to accommodate IDNs. The historical rules in this case come from RFC 1123, which specifies that top-level domain labels must be alphabetic.

Although the viewpoint has been expressed in the IETF and elsewhere that arbitrary syntax restrictions in TLD labels should be relaxed entirely, there is a substantial amount of software that might well make assumptions about TLD syntax, and those applications have the potential to malfunction if TLD labels in the root zone appear different. As stated in the draft:

Neither [RFC0952] nor [RFC1123] explicitly states the reasons for these restrictions. It might be supposed that human factors were a consideration;

[RFC1123] appears to suggest that one of the reasons was to prevent confusion between dotted-decimal IPv4 addresses and host domain names. In any case, it is reasonable to believe that the restrictions have been assumed in some deployed software, and that changes to the rules should be undertaken with caution.

ICANN in general defers to the IETF on matters such as TLD string syntax. String requirements would be expected to be adjusted in the future to be consistent to future work completed in the IETF. Those with an interest in this area are encouraged to participate via the IETF process.

The restriction on numbers in TLD labels as provided in the string requirements for this version of the Guidebook does not affect the availability of IDNs as TLD labels. One comment raised questions regarding specific examples of IDN strings in light of various aspects of the string requirements, and these are being analyzed.

A comment suggests that ICANN should revise the string requirements to require that the first character in a TLD string be a letter. This is already a requirement per the string requirements in section 2.2.1.3.2 of the Guidebook.

A comment expresses support for the work of the Joint ccNSO/GNSO IDN Working Group (JIG) concerning single-character IDN TLDs. The report of the JIG on this topic can be found at <http://www.icann.org/en/topics/new-gtlds/jas-milestone-report-11nov10-en.pdf>. Based on the work of an independent working group, ICANN has stated that additional policy work must be completed before single-letter IDNs can be delegated.

Eligibility

Several comments suggested changes to the eligibility and background screening portion of the evaluation. Some comments supported the provision by which entities on the 25 largest global stock exchanges would be deemed to have passed the criminal history portion of the background screening check, while others opposed it. A comment suggested that ICANN conduct at least a nominal check on such entities. The principle behind this provision is that those entities on stock exchanges have already been through rigorous background screening (via the listing process), not that they are exempt from scrutiny by virtue of being listed on an exchange. Given that these entities have already been through this screening, it is not a good investment of application fees to repeat this same (or a lesser) inquiry.

Comments were also received on the portion of the background screening that concerns history of cybersquatting. A comment suggested that use of UDRP and legal databases would be insufficient, and suggested independent investigations in addition. It is important to note that the criteria are based on decisions, rather than allegations or other types of commentary. It is unclear that additional court or UDRP decisions would be found in additional investigation. There was also a suggestion that ICANN create a

consolidated data source for this information; this could be helpful and this comment is well taken and ICANN commits to work on this.

Concerning the history of cybersquatting, some comments suggested that the threshold of three or more decisions with one occurring in the past four years was appropriate, while others suggested changes. Some comments suggested that the standard for establishing a pattern should be more flexible to allow for discretion and review of the circumstances. A comment also suggested that the applicant's history could be considered via a balancing whereby an applicant received credit for UDRP wins and lost credits for losses. Other suggestions included considering on which side the majority of cases fell, regardless of total number.

It is important that there be an objective standard to avoid the additional cost and potential inconsistent results of an ad hoc review, and provide greater predictability for applicants. Previous comments on this section called for additional information on what would constitute a "pattern" of behavior, with the expectation that the standard should be generally available to applicants. An objective standard has been put in place; however, the standard does provide discretion as it is included as a general rule, which can be reconsidered if warranted by exceptional circumstances. It should be recalled that, in a UDRP case, the burden of proof is on the complainant, who must prove that each of three required elements are present. The standard of three or more decisions with one or more occurring in the last four years accounts for both a threshold of repeated behavior and a relevant span of time.

Some comments suggested that it was unfair to impose an "unrelated ex post facto sanction" based on UDRP decisions. It should be noted that all background screening criteria concern previous actions unrelated to the gTLD application process. UDRP decisions are used as evidence in establishing a pattern of activity.

Comments suggested that findings of "reverse domain name hijacking" (i.e., using the UDRP or other mechanism in bad faith to attempt to deprive a registered domain-name holder of a domain name) should be considered in this inquiry. Comments were generally supportive that this activity should be accounted for in the applicant's background. We agree and the Guidebook language has been updated to include "reverse domain name hijacking."

Other comments suggested that it was not sufficiently clear that only decisions that are final (i.e., have not been reversed via appeal mechanisms) should be considered. This change has been accommodated to clarify the language. Comments suggested that it be clarified that the "decisions" referenced would be decisions against the applicant. This has also been clarified in the provisions included here.

Some comments suggested that the same background screening criteria should apply to affiliates or subsidiaries of an applicant. This was considered in the design of the process. To avoid an exponential increase in costs and complexity, the process must

be limited in some way. The process has been designed to focus the due diligence on the applying entity and identify the most serious background issues.

Some comments suggested removal of the “Legal Compliance” provisions from this section of the Guidebook. Comments suggested that the requirement that ICANN comply with US laws could cause political problems for ICANN in some countries and could spur the development of alternate roots. The intention with this section is to be transparent about this aspect of ICANN’s current legal structure. ICANN considers it important to disclose this information to prospective applicants, as well as to detail what steps ICANN takes in handling such cases (e.g., seeking and obtaining licenses). There is no choice but for ICANN to comply with these laws. The inclusion of this provision was also supported in some comments.

A comment suggested that ICANN conduct a study of cybersquatting behavior by registrars, and also consider the issue of accreditation standards for registrars. These suggestions are well-taken but off-topic for the Applicant Guidebook. Note that discussions on enhancement to the registrar accreditation process are already taking place; see <http://icann.org/en/announcements/announcement-2-22nov10-en.htm>.

A comment suggests that the public be given access to information about directors, officers, partners or controlling shareholders of new gTLD applicants to be consistent with transparency and accountability and to allow comments to be provided informing ICANN about certain applicants. While there is merit to this comment, disclosing the names as suggested would present significant challenges for a number of reasons:

- 1) From an application processing viewpoint,
 - a. by only providing the name without other personally identifiable information, there is an increased likelihood that ICANN would receive significant false positive information as the public would not be able to conduct a background check to a level similar to what ICANN will be conducting.
 - b. ICANN could receive a significant number of comments about a particular individual. Some of this information may be false positives, as stated in 1a, whereas other comments may only be rumor or speculation. ICANN and its provider would have to spend significant resources evaluating which comments would require further investigation.
- 2) The background check will be conducted based on publicly available information only. Allowing information that may not be publicly available to be provided for a single applicant or individual does not allow for a consistent process to be followed for all applications. For example, a commenter may provide information from an independently commissioned detailed background check that goes beyond just reviewing publicly available information. Not all applications may be subject to this level of outside review as the costs to conduct such a detailed background check may be prohibitive for

some commenters.

- 3) The background check is meant to be an added precaution and does not replace existing provisions regarding provision of false information by applicants. The existing provisions still allow ICANN to take necessary steps to address the concern and/or reject the application.
- 4) This is not a transparency issue. This is about the relative costs and benefits of posting specific information. Are DNS stability and competition goals better served if this information is published? The arguments above indicate that the risks of receiving false information and the costs of verifying publicly received information outweigh the benefits. The benefits are deemed to be small because the background checks will turn up relevant information and it is unlikely that the public comment would reveal additional publicly available information.

Transparency means being clear and open about the business decisions taken and following through on those decisions.

It should be noted that application comments can still be provided on applications and applicants including known officers, directors, partners, and the shareholders of the applying organization.

Reserved Names

Various comments suggested that names such as Olympic trademarks, regional ccTLD organizations, and Red Cross names should be placed on the Top Level Reserved Names List in section 2.2.1.2. With regard to the ccTLD organizations, this was considered; however, the top-level reserved names list is intended to be as narrow as possible, and cover only those names that have an impact on the DNS infrastructure or are part of the organizational structure of ICANN. The bodies mentioned are important DNS community members, but fall more into the category of constituencies, which are self-formed and self-governed, and it would expand the list considerably to include all of these as reserved names.

With regard to the inclusion of specific entities' names on this reserved list, it is understood that some names have statutory protection internationally. These can be handled on an objection basis. The protection of rights of third parties was a key policy recommendation on which the program is based. ICANN is considering the nature of these protections, and if appropriate, might augment the reserved names lists in special cases such as requested by the International Olympic Committee (IOC) and the International Red Cross, both of which are globally invested in representing the public interest. For example, the terms Olympic and Olympiad are protected by legislation in 25 countries and by treaty in 40 countries. (A comment notes that no response was

received from ICANN concerning protection of the Olympic trademarks. In fact, ICANN responded personally to this comment (see <http://icann.org/en/correspondence/beckstrom-to-lacotte-23mar10-en.pdf>) and recently met with IOC representatives during the ICANN public meeting in Cartagena.)

A related comment suggests that the Board consider requesting an Issues Report on the feasibility of adding the names of not-for-profits/NGOs to the Reserved Names list. The suggestion for working within the policy development process to address concerns is welcomed. It should be noted that that an Issues Report may also be requested by the GNSO Council or an Advisory Committee.

Other comments

A comment requested clarification to the template in question 46 (Financial Projections) for the case where an applicant chooses to outsource parts of its registry operations. The template has to do with the costs rather than how they are performed; however, ICANN will seek to clarify this in the instructions or provide an example.

A comment requested the ability to “link” application information in the financial projects template if an applicant is submitting more than one application. Explanatory information of this type can be presented in the notes section.

A comment suggests that ICANN make evaluators aware of potential for application abuses. ICANN agrees and is including this in the onboarding process for evaluators.

A comment suggested that ICANN did not respond to a previous suggestion from the GNSO on a change to the string similarity review to allow exceptions. In fact, ICANN responded at length in the analysis of comments on draft v4 of the Applicant Guidebook (see <http://icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf>). That response indicated that whether exceptions should be made to rules excluding delegation of “confusingly similar” TLD strings is a complex issue requiring additional policy discussion. The policy work should examine whether there should be exceptions for “non-detrimental” similarity (e.g., cases of common ownership or in view of context). The criteria and requirements for operation of similar TLDs in a “non-detrimental” manner are not obvious or straightforward. The exact criteria and requirements for such a situation to be unequivocally fulfilled have to be defined and need to be agreed by the wider community.

Other comments provided examples of strings and requested clarification on how they would be treated in the string similarity review. It is not possible to provide rulings on hypothetical applications, without the full expertise and resources to be applied by the panel. It is understood that applicants may wish to have additional guidance, and this is one reason the algorithm has been made publicly available for testing purposes. Note that refunds are available on a tiered basis where an application is eliminated at this stage.

TRADEMARK PROTECTIONS – OVERALL COMMENTS

Key Points

- Comments from every section of the ICANN community and broader Internet community have been thoroughly considered in the development of the current trademark protection mechanisms called for in the Applicant Guidebook.
- These trademark protections reflect carefully crafted compromises that received broad support within the GNSO and At-Large communities.
- Although some debate adequacy, the new trademark protections are unprecedented and aim to create a balance between all interested parties with a main focus of protecting rights holders and consumers, including both registrants and Internet users.
- Discussions continue with interested stakeholders to refine RPMs in order to increase effectiveness and reduce costs to trademark holders and Internet users.

Summary of Comments

Support for AG trademark protections. The proposed final AG has significant protections for trademark rights at the top and second level and the efforts of ICANN and the community resulting in these protections should be applauded. There is no question that trademark owners will enjoy more protections in new gTLDs than they do in current gTLDs and many ccTLDs. The combination of these protections will be available to all trademark owners, including those like the International Olympic Committee who are seeking special treatment. *Demand Media (8 Dec. 2010)*. *Domain Dimensions (9 Dec. 2010)*. *Minds + Machines (10 Dec. 2010)*.

DNS integrity and credibility.

The effort to design appropriate RPMs for an unprecedented expansion of the DNS is a unique opportunity to enhance the integrity of the space. Such an effort cannot avoid existing international legal norms including in the area of trademark law. The use or abuse of trademarks contributes a substantial part of the financial foundation of the existing (and likely future) registration system. *WIPO Center (2 Dec. 2010)*.

While much process has been invested into the establishment of RPMs for new gTLDs, only RPMs that work for all parties will contribute to the genuine credibility of ICANN's new gTLD program. The opportunity to achieve this is prior to their promulgation. The WIPO Center remains available to share its experience with ICANN. *WIPO Center (2 Dec. 2010)*. *AIPLA (6 Dec. 2010)*. *MarkMonitor (9 Dec. 2010)*.

RPMs are inadequate.

Little has changed in this area in the proposed final AG so COA references its July 21 comments. The almost complete lack of support for the final outcome among the

members of the community with the most at risk on the issue demonstrates that to a disheartening extent the process for reaching it –portrayed by ICANN as a triumph of the bottom up policy development process--has been a failure. It is also disappointing that the Economic Framework paper’s call for an objective study of the full costs to trademark owners of new gTLDs is evidently being jettisoned (along with the rest of the Economic Framework roadmap) or at least postponed until after the new gTLD launch, when it will be too late to tailor the launch to minimize these costs. *COA (3 Dec. 2010). AIPLA (6 Dec. 2010). INTA (8 Dec. 2010). IACC (9 Dec. 2010). Microsoft (9 Dec. 2010). IPC (9 Dec. 2010). News Corporation (9 Dec. 2010). CADNA (10 Dec. 2010). BBC (10 Dec. 2010). Adobe Systems (10 Dec. 2010). Verizon (10 Dec. 2010). IHG (Module 5, 10 Dec. 2010). LEGO (11 Jan. 2011). VKR (12 Jan. 2011). Arla Foods (11 Jan. 2011). Vestas (11 Jan. 2011). Telstra (23 Dec. 2010). Time Warner (15 Jan. 2011). DIFO (15 Jan. 2011).*

Unless the RPMs are improved, ICANN will be sacrificing the concerns of an overwhelming majority because of the overloud complaints of a well-meaning but misguided minority who want lesser protections. A small but significant number of the members of MARQUES or ECTA are evaluating the new gTLD opportunity. A failure to adjust the balance of trademark protections in favor of rights owners and the general public will be a deterrent to application and will undermine trust in ICANN. *MARQUES/ECTA (10 Dec. 2010).*

The proposed final AG does not provide any RPMs at the top level. *AT&T (10 Dec. 2010).*

The current scheme for rights protection is fundamentally flawed for lack of addressing main issues, including:

- (1) restoring the potency of the URS and providing at least for indefinite suspension of the domain;
- (2) adopting a meaningful loser pays for the URS and if it works applying it to the UDRP;
- (3) providing examples of what does and does not constitute a “good faith” basis for seeking an extension of time to respond to a URS complaint;
- (4) leveraging the TMC across the full array of RPMs to reduce the cost and time in proving and adjudicating what is often the least controversial issue: the presence of rights evidenced in valid national trademark registrations;
- (5) meaningful mechanisms to prevent or, failing that, terminate promptly malicious conduct; and
- (6) a plan to correlate the introduction of new gTLDs to demonstrated demand and social utility of proposed new registries.

INTA 8 (Dec. 2010).

ICANN’s current new gTLD plan does not meet AOC paragraph 9.3. The current plan still requires businesses to pay for defensive registrations in perhaps hundreds of new gTLDs at prices that are unconstrained by ICANN or other regulatory bodies. These defensive registrations will be necessary to prevent consumer fraud and confusion on

the part of users who are rightfully concerned about deceptive websites and online scams. The legal expenses and domain acquisition costs of defensive registrations will not be offset by potential economic or informational value to either registrants or Internet users. *AIPLA* (6 Dec. 2010). *U.S. Chamber of Commerce et al.* (9 Dec. 2010). *NCTA* (10 Dec. 2010).

Specification 7 is deficient with respect to rights protection and dispute resolution mechanisms. It neither conforms to the “tapestry” of protection measures recommended by the IRT nor does it provide an adequate substitute. The comments from the IPC and WIPO Center should be considered for integration into the proposed final AG. The recent publication of the Economic Report Phase II provides guidance that supports more comprehensive changes to RPMs in order to reduce the costs associated with new gTLDs for rights owners. *MarkMonitor* (Module 5, 7 Dec. 2010).

Globally Protected Marks List (GPML).

The GPML should be implemented (if it is good enough for ICANN it is good for others; also suggested by Economic Report to reduce brand abuse). *MarkMonitor* (Module 5, 7 Dec. 2010). *MarkMonitor* (9 Dec. 2010). *Adobe Systems* (10 Dec. 2010). *LEGO* (11 Jan. 2011). *VKR* (12 Jan. 2011). *Arla Foods* (11 Jan. 2011). *Vestas* (11 Jan. 2011). *Telstra* (23 Dec. 2010). *INTA* (14 Jan. 2011).

The Phase II economic report concludes that there is a higher rate of defensive registrations among the most valuable global brands, demonstrating the need for a GPML. There is a direct linkage between trademark infringement involving well-known corporate brands and malicious conduct that harms consumers. The .co registry has implemented a GPML as a way to attract customers and establish industry leadership regarding RPMs. This should be viewed as best practice incorporated into all new gTLDs. *AT&T* (10 Dec. 2010).

ICANN should extend to any organization that has won five or more UDRPs protection of the type proposed by the IRT in the GPML, at least during the first 3 years of the new gTLD program. This protection allowed any legitimate rights owner to register a name on the list provided it was for non-infringing use. *MARQUES/ECTA* (10 Dec. 2010).

Compliance agent. ICANN should appoint a professional agency to be the new gTLD Compliance Agent. This agency should undertake an annual compliance audit on all applicants and have the right to pay unannounced site visits on all new gTLD registry operators. Fees of this agent could be covered by income from contention auctions. *MARQUES/ECTA* (10 Dec. 2010).

Advisory Committee. ICANN should establish (independent of the IPC) an Advisory Committee for a 3-year period to monitor and recommend improvements in rights protection and to assess the economic impact of the new gTLDs. WIPO could have a key role on this committee. This committee would address the concerns addressed by the majority of commentators on previous editions of the guidebook who in the ratio of

5:1 have overwhelmingly called for greater protections. *MARQUES/ECTA (10 Dec. 2010)*.

Analysis of Comments

Many have commented on the general nature of trademark protections that have been put in place for the New gTLD Program. Some think they are quite sufficient, while others believe that the new RPMs that have been developed are not enough to protect trademark holders or minimize the need for defensive registrations.

As has been previously stated, it is important to reflect on the chronology of events that led to the development of the trademark protections now included in the New gTLD Program. Comments regarding specific RPMs are discussed elsewhere in the document. Discussions with representatives of Intellectual Property interests and others continue. Additional changes will be made to enhance the protections in the Guidebook. Some of those specific changes are also discussed elsewhere in the document under the headings of the specific RPMs.

After the early versions of the Applicant Guidebook were posted, the trademark community spoke out loudly and clearly – more trademark protections were needed. Those comments were heard by ICANN.

In response, the Board resolved to establish an Implementation Recommendation Team (IRT), to help identify and propose rights protection mechanisms (RPMs) for trademark holders within the New gTLD Program (see <http://www.icann.org/en/minutes/resolutions-06mar09.htm#07>). The IRT described itself as a group of 18 people experienced in trademark protection on the Internet.

Specifically, the Board asked the IRT to develop a set of solutions that addressed trademark protection and consumer protection in a way that was workable, and that was acceptable to other interests. Other parties were invited to respond to the IRT work, to propose solutions, and an extensive public outreach process was initiated, including several regional events held throughout the world.

In a series of face-to-face meeting, conference calls, and public consultations, the IRT engaged in intensive substantive discussion and developed specific recommendations (<http://icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>), reflecting “the views of business and trademark interests in general.” Those recommendations included proposals for an IP Clearinghouse (“Clearinghouse”), a Uniform Rapid Suspension System (“URS”), a Trademark Post-delegation dispute resolution procedure (“PDDRP”), and a globally protected marks list (“GPML”). Concerns from the broader ICANN Community immediately emerged with respect to several IRT recommendations.

After significant public comment, through both the public comment forum and numerous face-to-face meetings, additional refinement of the IRT proposals were needed in order

to balance the interests of the community as a whole, the trademark holders, and registrants with legitimate interests in registering domains that might also be the subject of a trademark. Compromises were also required in light of the implementation difficulties of some of the IRT proposals.

The next iteration of the Guidebook included nearly all of the trademark protection mechanisms suggested by the IRT, including the Clearinghouse, the URS and the PDDRP. The GPML was not included in light of the implementation difficulties with, and the significant opposition to, such a list. Later, the Board resolved as follows:

The Board notes that the suggestion for a globally-protected marks list (GPML) was not adopted by the Board (in 2009), including for the following reasons: it is difficult to develop objective global standards for determining which marks would be included on such a GPML, such a list arguably would create new rights not based in law for those trademark holders, and it would create only marginal benefits because it would apply only to a small number of names and only for identical matches of those names.

See <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>.

It is clear that the trademark interests have continued to raise the GPML as possible RPM. While this discussion may continue, no further progress or decisions have been made.

After further comment, discussion and revision, the Board sent the Clearinghouse and the URS proposals back to the GNSO. The Board requested the GNSO Council's view on whether the Clearinghouse and URS recommended by the staff were consistent with the GNSO's proposed policy on the introduction of new gTLDs, and were appropriate and effective for achieving the GNSO's stated principles and objectives.

In response to the Board's request, the GNSO established the Special Trademark Issues Review Team ("STI"), consisting of members of each Stakeholder Group, At-Large, Nominating Committee Appointees, and the GAC. The STI issued a final report on 17 December 2009, including several recommended revisions to the Clearinghouse and the URS proposals (see <http://www.icann.org/en/announcements/announcement-2-17dec09-en.htm>), which were unanimously adopted by the GNSO.

In addition, ICANN invited community participation in an open consultation process to discuss and propose revisions to, among other things, the PDDRP. This group was formed as the temporary drafting group ("TDG").

Together, the IRT recommendations, the STI revisions, the TDG revisions, and comments from every section of the ICANN community and broader Internet community were taken into consideration in the development of the current trademark protection mechanisms called for in the Applicant Guidebook. These trademark protections are

unprecedented and are intended to create a balance between all interested parties with a main focus of protecting consumers, including both registrants and Internet users.

These trademark protections now part of the new gTLD Program include:

- The requirement for all new registries to offer either a Trademark Claims service or a sunrise period at launch.
- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars.
- Implementation of the URS that provides a streamlined, lower-cost mechanism to suspend infringing names.
- The requirement for all new gTLD operators to provide access to “thick” Whois data. This access to registration data aids those seeking responsible parties as part of rights enforcement activities.
- The availability of a post-delegation dispute resolution mechanism that allows rights holders to address infringing activity by the registry operator that may be taking place after delegation.

And of course, the existing Uniform Domain Name Dispute Resolution Policy (UDRP) continues to be available where a complainant seeks transfer of names. Compliance with UDRP decisions is required in all new, as well as existing, gTLDs.

Each of the recommendations above is intended to provide a path other than defensive registrations for trademark holders.

The application process itself, based on the policy advice, contains an objection-based procedure by which a rights holder may allege infringement by the TLD applicant. A successful legal rights objection prevents the new gTLD application from moving forward: a string is not delegated if an objector can demonstrate that it infringes their rights.

With respect to comments about specific RPMs, as noted above, the details have been dealt with in relation to each of the adopted mechanisms. Further, discussions with intellectual property interests (as well as the Governmental Advisory Committee) are continuing and additional changes are anticipated in response to those discussions.

One commenter suggested that a Compliance Agent be appointed to conduct audits and inspections. As a reminder, Specifications 9 was added to the draft base Registry Agreement that provides for internal as well as ICANN conducted audits. (See <http://www.icann.org/en/topics/new-gtlds/draft-agreement-specs-clean-12nov10-en.pdf>.) Further, the ICANN Contractual Compliance Department will continue to expand and enhance its auditing capabilities as new gTLDs are introduced.

Finally, one commenter suggested that ICANN establish an Advisory Committee for a 3-year period to monitor and recommend improvements in rights protection and to assess

the economic impact of the new gTLDs. Such a committee is already contemplated by the Affirmation of Commitments (AoC). Pursuant to the AoC, ICANN committed as follows:

If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine 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. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

Thus, the AOC sets out the fact that a committee will be established, it lays out what the committee will evaluate and how the composition of that committee will be determined. Indeed, establishment and operation of the Accountability and Transparency Review Team, as well as the Whois Review Team and the Stability, Security and Resiliency Review Team called for by the AoC will inform this process.

Trademark Clearinghouse (Clearinghouse)

Key Points

- Validation of use is intended to provide an easily resourced mechanism so that all marks receiving the same type of advantage from a particular RPM are evaluated at substantially the same level.
- As recommended by both the IRT, a limitation to identical match with respect to sunrise and trademark claims services has been adopted. A recommendation that the Clearinghouse include a limited number of the mark + a key term is being considered.
- Costs should be borne by the parties utilizing the services. The Clearinghouse is expected to result in savings for all parties over existing practices.

General

Summary of Comments

The Clearinghouse is not a real remedy but is essentially just a database. *BC* (6 Dec. 2010). *LEGO* (11 Jan. 2011). *VKR* (12 Jan. 2011). *Arla Foods* (11 Jan. 2011). *Vestas* (11 Jan. 2011).

The TMC is not an RPM but is a database. It must be combined more effectively with other measures to stop trademark infringement. It does not support inexact matches (economic report supports inclusion of inexact matches). *MarkMonitor* (Module 5, 7 Dec. 2010). *MarkMonitor* (9 Dec. 2010). *AT&T* (10 Dec. 2010). *BBC* (10 Dec. 2010). *Adobe Systems* (10 Dec. 2010). *Verizon* (10 Dec. 2010). *IHG* (Module 5, 10 Dec. 2010).

The Clearinghouse will in sum be an additional cost to trademark owners with limited usefulness. *Verizon* (10 Dec. 2010).

The Clearinghouse is a practical step that will help to minimize brand protection costs. *Demand Media* (8 Dec. 2010).

The Clearinghouse should be available to complainants under the UDRP also, both for purposes of registrations under the new gTLDs and under the existing gTLDs. *NCTA* (10 Dec. 2010). *AutoTrader.com* (10 Dec. 2010).

Analysis of Comments

The role of the Trademark Clearinghouse continues to be the subject of comment from various constituencies and stakeholders. Some question its role, some suggest that it should interact with other existing trademark enforcement avenues for relief, while others state that the Clearinghouse in its present form is an effective way in which to minimize brand protection costs. ICANN appreciates all of these comments, which have been heard and considered, often more than once. The Clearinghouse, in its present form, attempts to balance the important efforts to enhance trademark protections, while also taking heed of registrants' legitimate use of words in a domain name that might also be subject of a trademark. Accordingly, subject to further refinement through the GAC consultation and other comments received to date, the positions in the Clearinghouse proposals will be finalized substantially similar to as it was in the Proposed Final Applicant Guidebook.

As has been stated previously, the purpose of the Trademark Clearinghouse is set forth in the most recent version of the Applicant Guidebook which provides "The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated pertaining to the rights of trademark holders. As such, ICANN will 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.” (See page 249 of the Draft Applicant Guidebook at <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>.) This central repository enables the trademark holder to avail itself of all rights protection mechanisms in the pre-delegation process. The Clearinghouse is thus considered as more than a database and was suggested by the Implementation Recommendation Team (IRT), which was made up of those supporting trademark interests.

It should be noted that the Clearinghouse was created by the IRT to reduce costs to Trademark holders. Rather than registering for sunrise or IP Claims services in each of every new gTLD, they could register just once. The Clearinghouse also serves as a vehicle for RPMs: sunrise and IP claims services. Therefore, while not an RPM in itself, the Clearinghouse presents benefits to trademark holders: cost reduction, standardization of RPMs and a vehicle for RPM implementation.

To the extent there is any question about what “validation” by the Clearinghouse means, this issue has been addressed in response to other comments below. In short, validation only refers to validation that the trademark is in actual “use” in commerce, which as currently proposed is needed to ensure protection in a sunrise services offering by a registry (or to utilize the URS). No use validation is required for participation in a pre-launch Trademark Claims service.

Although the Trademark Clearinghouse may later serve other purposes, at this point it will be used only in connection with the New gTLD Program and will not be extended to other avenues such as the UDRP that was not developed in connection with the GNSO’s New gTLD Policy Recommendations.

Fees and Costs

Summary of Comments

The range of costs is still unclear. ICANN, working with the selected service providers, should publish a proposed cost list as soon as possible, both for inclusion in the Clearinghouse and for other maintenance and renewal fees, to facilitate planning for brand owners. *MARQUES/ECTA (10 Dec. 2010)*.

The current Guidebook fails to address problems with the Clearinghouse on which CADNA has commented extensively in the past. The Clearinghouse will likely place significant monetary burdens on trademark owners. ICANN should review the Clearinghouse and see if changes can be made to provide more information on criteria and fees as well as jurisdictions. *CADNA (10 Dec. 2010)*.

It is unfair in principle that brand owners who have already borne the costs of obtaining national trademark registrations should also bear any or all of the cost of providing data to the Clearinghouse. Registries and registrars should also contribute to the cost of the Clearinghouse as the Clearinghouse will provide benefits to them and since they (and

not most trademark owners) will be the main beneficiaries of the new gTLDs overall. ICANN should also bear some of this cost even if only initially as an up-front investment recovered back through use. *BBC (10 Dec. 2010)*.

Costs of developing and operating the Clearinghouse should be borne by ICANN and its registries and registrars. The Clearinghouse will reduce administrative costs for registries and registrars. If the Clearinghouse is to be effective, the cost of registration must be less than the cost of independently monitoring new gTLDs (particularly for trademark owners based in countries with relatively weak currencies). *Telstra (23 Dec. 2010)*.

Fees for listing a trademark on the Clearinghouse database should be minimal. If fees are set too high, this will defeat the Clearinghouse's aim of reducing costs for trademark owners. *Telstra (23 Dec. 2010)*.

Analysis of Comments

Many comments continue to revolve around who will pay for the Clearinghouse and the fees that will be charged. The IRT and the STI have considered this issue and ICANN recognizes its importance. We have heard and considered all of the comments in this area and have made decisions based on all of them from all stakeholders.

As stated by the STI, and adopted in the latest version of the Guidebook, “[c]osts should be borne by the parties utilizing the services. ICANN should not be expected to fund the costs of ... operating the TC.” Notwithstanding, ICANN will bear the costs of establishing the Clearinghouse and will share those costs with the Provider(s).

While the fees that the Provider(s) will charge have not been established, ICANN agrees that economical fees can and should be part of the consideration and ultimate selection when the Provider is selected through the open bidding process. While trademark holders may have to incur some costs to register their marks in the Clearinghouse, or possibly have their mark validated for use, any trademark holder seeking to enforce a mark will, at times, have to incur costs to do so. Further, every effort will be made to keep costs of providing the RPMs as low as possible and it is believed that the Clearinghouse will reduce costs in the long run. Indeed, rather than having to register, and pay a registration fee, for each and every sunrise or pre-launch claims services offered by each new gTLD operator, a trademark holder will need to register just once in the Clearinghouse. Thus, while it may lower administrative cost for registry operators, it is also intended to significantly lower, no increase, the financial burden on trademark holders.

Eligibility for Inclusion and Protection

Summary of Comments

Declaration. The declaration/affidavit requirement is burdensome. Why would a certified copy of a valid trademark registration certificate or the official online database record of the relevant trademark registry not suffice? *BBC (10 Dec. 2010).*

“Blocking” RPM. A service offering “blocks” that do not resolve for the TLD should be provided to TLD registries. The Economic Report Phase II noted that there is value in giving trademark holders the ability to block the use of trademarked items beyond a sunrise period and recognizes that some trademark holders are interested in preventing other parties from using domains containing trademarks but are not interested in affirmatively using those domains. *EnCirca (9 Dec. 2010).* *News Corporation (9 Dec. 2010).*

Common law trademarks. Extending Clearinghouse to common law marks that are substantively authenticated would streamline other RPMs such as UDRP and URS, which allow claims for relief based on common law rights. At a minimum, registry operators should be allowed to include those marks in their RPM and to do that they will need the data in the Clearinghouse. *IACC (9 Dec. 2010).* *MarkMonitor (9 Dec. 2010).*

Dot-TLD marks should be included.

It is unfair to exclude Dot TLD marks. Numerous online-only business and other organizations have come into being that only use a mark that incorporates a TLD, e.g. GO.COM. Marks consisting of a generic term followed by a TLD would be excluded from a Sunrise service, which addresses a potential gaming or abuse concern. In addition, all other RPMs are adversary in nature, so that the registrant or proposed registrant can make the argument that despite a registration a mark cannot serve as a trademark and therefore the owner of the mark is not entitled to protection. *NCTA (10 Dec. 2010).* *AutoTrader.com (10 Dec. 2010).*

If a mark has been awarded by a legal entity, even one that includes an extension, on what grounds does ICANN re-delegate what the government has already validated? E.g., ICANN is saying that GoDaddy.com, a legal trademark, will not be included in the clearinghouse—why not? If someone registers BingBingDeeDee.net as a trademark, there is only one BingBingDeeDee.net. Why does the clearinghouse skip protection? *L. Timmons (Module 5, 13 Nov. 2010).*

Identical match.

This provides little practical protection to brand owners as most examples of malicious conduct or cyber squatting involve a domain name consisting of a trademark plus a generic or descriptive term. At a minimum, a match should include plurals of and domain names containing the exact trademark. *IACC (9 Dec. 2010).* *MarkMonitor (9 Dec. 2010).* *IPC (9 Dec. 2010).* *EnCirca (9 Dec. 2010).* *BBC (10 Dec. 2010).* *Adobe Systems (10 Dec. 2010).* *Verizon (10 Dec. 2010).* *LEGO (11 Jan. 2011).* *VKR (12 Jan. 2011).* *Arla Foods (11 Jan. 2011).* *Vestas (11 Jan. 2011).*

The Clearinghouse must not only look for identical matches but also domain names that are “confusingly similar.” It is imperative that the Clearinghouse return to the provisions

set out in the original IRT draft. Being allowed to only submit one entity to be covered in the Clearinghouse is not cost-effective, efficient, or in the best interest of trademark owners trying to protect against abuses. This needs to be changed, especially for companies such as IHG who have more than one brand to protect. *IHG (Module 5, 10 Dec. 2010)*.

Trademark Claims should warn registrants on both exact matches and strings that are wholly inclusive of a trademark contained within the Clearinghouse. They should also be required along with the Sunrise Period to reduce costs to brand rights holders and provide a disincentive for abuse. *MarkMonitor (Module 5, 7 Dec. 2010)*. *Hogan Lovells (9 Dec. 2010)*.

A trademark claim should be issued to every applicant for a term that is identical or similar to or containing a trademark in the Clearinghouse. *MARQUES/ECTA (10 Dec. 2010)*.

The “match” criteria for an existing trademark should be broadened to include the mark plus a generic word. Without this additional protection, the efficiency of the Clearinghouse will be greatly diluted. In the alternative, names which consist of a trademark and a generic word should be allowed to be registered in the TMC. *Telstra (23 Dec. 2010)*.

Limiting notification to identical marks, should be dropped. *EnCirca (9 Dec. 2010)*.

Word marks.

Many trademark owners have word + device marks (e.g. word marks in stylized text) which presumably would be excluded. *BBC (10 Dec. 2010)*.

Clarification is needed on, among other issues, the criteria for word marks, e.g., non-Latin script word marks (*cf.* increasing IDN domain name registrations) or those with additional design elements. *WIPO Center (2 Dec. 2010)*.

“Substantive evaluation” requirement.

Excluding all non-U.S. trademark registrations by requiring “substantive evaluation” for proof of use before a trademark registration is admitted to the Clearinghouse is a significant oversight in need of correction. In the most recent proposed final Applicant Guidebook, in its desire for inclusiveness the Board has actually (inadvertently we presume) actually excluded nearly all trademark registrations in the world from being eligible for Sunrise protection or the URS, absent full examination by the Clearinghouse, by introducing a new requirement that registration include evaluation of use. In a majority of countries (i.e. the civil law countries) rights arise through registration, not use. An even larger majority of trademark laws merely provide that a registration is vulnerable to cancellation upon third party petition if it has not been used for a period of years after registration.

The U.S. is almost unique in evaluation proof of use in almost all cases prior to registration. Thus the Board uniquely advantaged U.S. trademark registrants in the URS or any Sunrise scheme. INTA hopes that the Board did not intend this consequence and urges ICANN to clarify that “substantive evaluation” should require only evaluation on absolute grounds, as most countries’ trademark laws provide valid trademark rights without use for years after registration. The most appropriate course is not to require that the mark be in use. If the Board is determined to respect only marks that are in use, it would be more appropriate merely to require the trademark owner to declare or affirm that the mark is in use, and perhaps amend the Sunrise Challenge mechanism to allow challenge on the basis that the sunrise mark had not been in use for the period that would subject it to cancellation under the law of the jurisdiction where it was registered. *INTA (8 Dec. 2010). Hogan Lovells (9 Dec. 2010). MarkMonitor (9 Dec. 2010). IPC (9 Dec. 2010). EnCirca (9 Dec. 2010). BBC (10 Dec. 2010). RE/MAX (10 Dec. 2010).*

If evidence of use were submitted in order to “validate” the mark, it would cause grave concern if that evidence were made available to any third parties as this could be highly confidential and sensitive commercial information. The underlying evidence of use to “validate” the mark should not be published in any way or to any person. *BBC (10 Dec. 2010).*

It should be clarified what is meant by the term “validation” in the context of the Clearinghouse, with an explicit statement that the Clearinghouse itself is not a legal authority with the power to grant trademark rights. An alternative term such as “verify” may be an option. *MARQUES/ECTA (10 Dec. 2010).*

It is not clear if there is a difference between “validation” services and “evaluation” services. If there is a difference, this needs to be spelled out. If there is no difference, then the terms need to be modified and made consistent. Section 7.4 should be modified to: “Validation by Trademark Clearinghouse service provider shall require evaluation on absolute grounds.” *IPC (9 Dec. 2010).*

Clearinghouse sections 7.3 and 7.4 should remove the reference to evaluation on relative grounds and evaluation of proof of use. *IPC (9 Dec. 2010).*

Section 7.3 also violates section 1.6 describing the purpose of the Clearinghouse. *EnCirca (9 Dec. 2010).*

Based on an informal survey, it seems that only trademarks registered in the U.S., Canada and the Philippines are subject to a substantive examination as defined in the proposed final Applicant Guidebook, and that trademarks registered outside these three countries without an eligible counterpart registration (i.e. registered before 26 June 2008) in one of those three countries would be excluded from participation in the Sunrise Services and the other protections proposed for registered trademarks such as the Clearinghouse and URS. IBM believes that ICANN did not intend to exclude so many trademarks registered in various jurisdictions outside the U.S., Canada and the Philippines and requests that ICANN reconsider this definition so that trademark owners

that have focused on trademark protection outside of these three countries can avail themselves of these important protection mechanisms. *IBM (10 Dec. 2010)*.

The current proposal discriminates against trademark owners who have registrations within jurisdictions that do not evaluate for use. All owners of trademarks should be treated equally by the Clearinghouse. Registry operators should be left to decide whether they want to introduce a check for use when they launch. *MARQUES/ECTA (10 Dec. 2010)*.

The standards for recognizing marks under the Trademark Claims and Sunrise service should be the same—that marks may be recognized irrespective of whether the country of registration conducts a substantive review. *BBC (10 Dec. 2010)*.

Revise section 7.1.3 language as follows: Registries must recognize all word marks: “(i) that are registered (not just applied for); and have been through the relevant period for opposition applied in the country of registration; and are not subject to a pending opposition, revocation or cancellation action; and are in use;” and it would be sufficient for the rights owner to make a simple declaration of use. Sections 7.3 and 7.4 should be deleted (now redundant). This revision, requiring use of a trademark in order to enter the Clearinghouse database, is designed to create qualification hurdles high enough to exclude cyber squatters seeking to register terms in the Clearinghouse without setting the hurdle so high that legitimate rights owners cannot qualify. The use requirement may prevent a few genuine brand owners from benefiting from the sunrise period but these will not be too numerous and cyber squatters are less likely to target trademarks for products that have yet to be launched. *BC (6 Dec. 2010)*. *Hogan Lovells (9 Dec. 2010)*.

In essence most trademark owners would need to resort to validation by the Clearinghouse validation service providers. This will create an expensive burden for trademark holders. This is unreasonable and a form of unjust enrichment on the part of Clearinghouse validation service providers. Also, given the potential for conflict of interest, the assessment of which countries conduct substantive review upon trademark registration should be carried out by an independent body to the extent this is possible. *Hogan Lovells (9 Dec. 2010)*. *BBC (10 Dec. 2010)*.

If the problem of substantive evaluation cannot be successfully resolved so as to ensure no discrimination and associated additional costs for certain trademark owners, it is worth exploring as an alternative the possibility of subjecting protection of trademarks by Sunrise mechanisms to a chronological condition whereby trademarks would need to have been registered prior to a specific cut-off date in order to be eligible for protection as was the case in previous launches (.asia, .tel). There must be room for maneuver for certain national and regional trademark registries to be considered as meeting the standard of “substantive evaluation” at the point of registration without satisfying the three requirements as set out in the proposed final AG. *Hogan Lovells (9 Dec. 2010)*.

ICANN's attempt to define substantive evaluation has created new problems. ICANN should define "substantive evaluation" to mean evaluation on absolute grounds. *Microsoft (9 Dec. 2010)*.

Many jurisdictions do not appear to require use prior to registration. The current design of the Clearinghouse implies that many trademarks registered in good faith will face a potentially costly additional process--in particular, SMEs that may not have obtained multiple national trademark registrations. A proper review of the Clearinghouse proposal requires additional information as to the use criteria to be applied, the envisaged fees and any differentiation thereof, and which if any jurisdictions the Clearinghouse apparently intends to exempt from validation. *WIPO Center (2 Dec. 2010)*.

If ICANN continues with this discrimination the question remains over who will draw up the list of countries that undertake substantive review. The Clearinghouse service provider or ICANN should not perform this task. Instead, a third party organization with the appropriate legal expertise should develop the list. *MARQUES/ECTA (10 Dec. 2010)*.

Inclusion of not-for-profits/NGOs names and trademarks. The ICANN Board should instruct Staff and the approved Clearinghouse provider(s) contracted by ICANN to add the names of not-for-profit organizations and NGOs and any trademarks owned by them into the Clearinghouse databases without a fee. The names and trademarks selected for inclusion should (a) meet the same criteria as required for other marks to be included in the Clearinghouse, as stated in Module 5; or (b) be subject to an alternative review procedure to establish use-based rights. *P-NPOC (1 Dec. 2010)*. *Red Cross (9 Dec. 2010)*.

Olympic trademarks. The Clearinghouse should include Olympic trademarks protected by future statutes and treaties. Limiting statutory-based inclusion in the Clearinghouse to only marks under existing treaties unduly discriminates against future Olympic games, host cities and corresponding trademark rights. The justification for this limitation given by ICANN staff—to prevent potential abuse—is without merit. Moreover, there is no rational basis for the Clearinghouse to protect all future marks validated through judicial proceedings but to deny protection for future marks validated through legislative proceedings (i.e. special statutory protection for future Olympic games). ICANN staff should strike this limiting clause from the criteria for inclusion in the Clearinghouse or should adapt it accordingly. *IOC (29 Nov. 2010)*

Sunrise.

Sunrise periods are primarily revenue generating activities for registrars, and they do not effectively protect brands and the consumers they serve. *MarkMonitor (Module 5, 7 Dec. 2010)*.

There is no provision for a price cap to help limit sunrise period fees. *Verizon (10 Dec. 2010)*.

A sunrise is not an RPM and is not adequate; it is merely a means of facilitating defensive registrations by the trademark owner and does nothing to prevent abusive registrations. We would prefer to see a mandatory pre-launch Trademark Claims service, but there would be a need for a greater level of protection than is currently the case. *BBC (10 Dec. 2010)*.

Trademark Claims Services.

The Trademark Claims service is of limited value because it is optional. *Verizon (10 Dec. 2010)*.

There should be a process allowing trademark owners to object prior to registration of a domain name; this would save time and money and not force the parties into a post-grant URS. Also ideally one national registration per mark should be recorded in the Clearinghouse. But since there will be no notification to the trademark owner of the application to for registration and no opportunity to communicate with the registrant prior to registration, one national mark may not be sufficient, thereby increasing costs and workload. *BBC (10 Dec. 2010)*.

IP Claims should also have a dispute policy that can be invoked by trademark owners. *EnCirca (9 Dec. 2010)*.

Section 6.4(d) should remain for sunrise registrations but more flexibility should be allowed for IP Claims since they do not result in a registration for the trademark owner. *EnCirca (9 Dec. 2010)*.

What procedures does ICANN propose to put in place to confirm the truth of the registrant's warranty that their registration and use of the domain name will not infringe the rights of which they have been notified (e.g. sworn statement, independent assessment)? *BBC (10 Dec. 2010)*.

The claims service should be mandatory throughout the life of new gTLD registries, not just at pre-launch. *Telstra (23 Dec. 2010)*.

Sunrise and Trademark Claims Are Insufficient. These services are not new and exist today. Neither have sufficiently hindered bad faith registrations. Both mechanisms are pre-launch and need also to be post-launch to have any real value. They also differ regarding which trademarks are recognized—trademark claims recognizes trademarks that are registered in countries conducting a so-called substantive review or examination. There is no explanation for this difference, which means that all CTMs and most national European trademarks are excluded from the sunrise service. *LEGO (11 Jan. 2011)*. *VKR (12 Jan. 2011)*. *Arla Foods (11 Jan. 2011)*. *Vestas (11 Jan. 2011)*.

Clearinghouse should be exclusive source for RPMs. The Clearinghouse should be the sole exclusive agent for all RPMs offered by new gTLDs where registered trademarks are required for eligibility. The following language should be added: "If a TLD provides ANY Rights Protection mechanism that requires verification of registered trademark

rights in order for applicants to be eligible for the RPM, then the trademark clearinghouse must be EXCLUSIVELY used for this purpose.” TLDs should be prohibited from offering an optional validation service for sunrise or IP claims that is also provided by the Clearinghouse. Making the Clearinghouse the exclusive agent for trademark validations also remedies a flaw in specification 7, which as currently written does not prevent any bad faith behavior by Registries since by definition any use of an RPM is optional for trademark owners. *EnCirca* (9 Dec. 2010).

Both the Trademark Claims and Sunrise Period processes should be required for pre-launch by every gTLD registry. *MarkMonitor* (9 Dec. 2010).

Analysis of Comments

The Clearinghouse, a suggestion by the IRT, endorsed by the STI, is meant to house underlying data that supports certain trademark protection mechanisms. Those protection mechanisms are varied.

Criteria for entry into the Clearinghouse, and later validation, has been the subject of widespread comment and review. It is evident that there is some confusion about substantive evaluation at the time of trademark registration versus validation for use by the Clearinghouse Validation Service Provider and that will be clarified in the Guidebook. Also of some discussion is whether the Clearinghouse-supported RPMs should reach broader than identical matches of trademarks. Further at issue is the value of sunrise and pre-launch claims services. There are some additional concerns and considerations that have been raised. All of these issues are discussed below.

As noted, numerous comments seek understanding and clarification of “substantive evaluation” as set forth in the Guidebook. In order to make clear what is required for substantive evaluation, the Board adopted the following resolution on 25 September 2010 (see <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>), in pertinent part:

Substantive Evaluation: The Applicant Guidebook will provide a clear description of "substantive evaluation" at registration, and retain the requirement for at least substantive review of marks to warrant protection under sunrise services and utilization of the URS, both of which provide a specific benefit to trademark holders. Specifically, evaluation, whether at registration or by a validation service provider, is required on absolute grounds AND use of the mark.

Substantive evaluation upon trademark registration has essentially three requirements: (i) evaluation on absolute grounds - to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds - to determine if previously filed marks preclude the registration; and (iii) evaluation of use - to ensure that the applied for mark is in current use. Substantive review by Trademark Clearinghouse validation service provider shall require: (i) evaluation on absolute grounds; and (ii) evaluation of use. The Applicant Guidebook language will be revised to reflect the above clarifications.

Some have suggested that requiring validation for use would result in discrimination against certain holders of certain registrations. As stated previously, it is not believed that such a requirement would lead to discrimination. To the contrary, validation of use is intended to provide a mechanism so that all marks receiving the same type of advantage from a particular RPM are evaluated at substantially the same level.

All nationally or multi-registered marks, as well as those protected by treaty, statute or as determined by a court to be valid, are eligible for inclusion in the Clearinghouse. Further, that same universe of marks is eligible for all trademark claims services offered by any new gTLD registry operator. While marks must be validated for use in order to serve as the basis for sunrise protection, the Clearinghouse Validation Service Provider, or possibly even another provider, will provide those validation services. While investigation of what validation would require is still under review, consideration is being given to requiring a simple declaration from the trademark holder that the mark has been in use and provision of a sample of that use in commerce (such as a label, advertisement, screen shot or the like). Validation for use is an appropriate bar for sunrise protection since, in sunrise services, certain marks get an advantage over others. Indeed, having the “evaluation for use” requirement will reduce the possibility of abuses and add a level of protection to for legitimate trademark holders during a sunrise period.

One comment argues that validation data should be kept confidential. However, as contemplated, data showing use will be in the public domain. Thus, submitting evidence of use is not believed to raise any confidentiality issues.

Whether to include common law marks in the Clearinghouse has also been the subject of discussion. On the one hand, trademark holders wanted to be sure that they could register their marks but at the same time there were concerns that fraudulently obtained registrations could be used to game the system. The result of review and input from a variety of stakeholders was to create a list of specific criteria for entry. If objective criteria are used, such as registrations, there is no way in which to allow for common law marks that have not been court validated to be included, or discretion would have to be exercised, and the unintended result will be that similarly situated applicants will be treated differently. Accordingly, common law marks will not be included in the Clearinghouse.

Some question the need for a declaration at the time of entry into the Clearinghouse. To be an effective RPM, the Clearinghouse must operate efficiently. Out-of-date or inaccurate data in the Clearinghouse will harm applicants, trademark holders, and others. To that end, it was agreed that as an additional safeguard to ensure reliable and accurate data, trademark holders will verify the accuracy of their information and agree to keep it current. The mere fact that a certified copy of a registration exists does not mean that the named registrant is the mark holder or that the information is current and accurate. A sworn declaration attesting to the validity of the mark is less time consuming and much less costly than a certified copy of a registration. Thus, it will be

required. The inclusion of a sworn declaration requirement is not believed to increase the costs of submission; at the same time, requiring it will help maintain the integrity of the data and ensure that it is reliable, accurate and up to date.

Some comments suggest that limiting protections to “identical match” under trademark claims or sunrise services is too restrictive. While this suggestion has been the topic of much discussion, both the IRT and the STI adopted this same limitation to identical match with respect to sunrise and trademark claims services. Further, expansion into names simply containing marks could be unwieldy and require discretion, which could lead to disparate treatment. Recent discussions suggest that the Clearinghouse should also include a limited number of entries consisting of the mark + a key term. This expansion is still under consideration as marks that might receive protection with respect to trademark claims services – but only to the extent that the key terms are related to the mark in a significant way and the number of additional entries is limited in an objective way (for example a specific maximum number such as five).

Clarifying questions have been raised with respect to protection for names or marks that are protected by treaty or statute. In the last version of the Guidebook, only marks under treaties or statutes existing or in effective before 26 June 2008 were protected. The limitation was developed in order to prevent potential abuse. The suggestion to remove this limitation has been considered and it has been determined that it does make sense to remove the time limitation from trademark claims services protection, which does have broader scope, but maintain it for sunrise protections which provides one mark with an advantage over another. Thus, section 3.2.3, 3.6 and 7.1.2 could refer to marks protected by statute or treaty “in effect at the time the mark is submitted to the Clearinghouse for inclusion.”

Special treatment in the Clearinghouse for NGOs or “not for profit” organizations, as one commenter has suggested, is inappropriate. What constitutes an NGO or “not for profit” organization will have varying definitions and simply because an organization is an NGO or not for profit does not mean that its mark holder is entitled to different treatment than other organizations. This would add a level of discrimination that all stakeholders are trying to eliminate to the extent possible.

Whether a “dot-TLD” mark (e.g., “ICANN.ORG” or “.ICANN”) should be included in the Clearinghouse has raised differing views. Some do not understand why they should be excluded, while others support the exclusion. The Clearinghouse is designed to be a repository for trademarks. To fulfill the objectives of the IRT and the STI, it has been decided that those marks that actually function as trademarks, i.e., indicate source, are those that will be eligible for inclusion. Many safeguards have been established to prevent abuse and to ensure neutral application of validation standards, including objectively verifiable data that the mark does serve a legitimate trademark purpose. It has been successfully argued that TLDs standing alone do not serve the trademark function of source identification. Instead of telling consumers “what” a product is or who makes it, they tell consumers where to get it. Because the TLD, standing alone, does not indicate source, and because allowing marks in the Clearinghouse that include a

TLD will increase the likelihood of confusion, abuse and gaming, on balance they are excluded. This exclusion will also obviate the need for registration of defensive trademarks in this area.

The Sunrise and Trademark Claims services have been the subject of much discussion, as well. Some would like an opportunity to object to a domain name prior to it being awarded, others suggest that the Trademark Claims service should be mandatory or extended to post-launch.

At the outset, it should be noted that the role of the Clearinghouse, the Trademark Claims Service and the Sunrise have been discussed at length by the IRT and the STI. The goal of these services is not to provide a blocking mechanism as there are often numerous legitimate reasons many different people would want to use a word that might be covered by a trademark registration somewhere in the world. In that same vein, a mandatory pre-registration notice/dispute policy is not feasible or necessary, particularly in light of the affirmative requirement imposed on the registrant that it must attest to having a legitimate interest in the applied for TLD. Moreover, in many cases, without content associated with a particular domain name, it would be difficult to ascertain what, if any, harm might be suffered by a trademark holder such that it would have a right to seek relief. Thus, on balance, neither a blocking mechanism, nor a pre-registration dispute resolution mechanism would serve a role commensurate with the burdens and costs on the potential registrant and the potential registry.

With respect to application of either the claims service or sunrise post-launch, the IRT has stated that these services will not be mandatory because of the existence of other post-launch mechanisms including the URS, the PDDRP, as well as all courts of competent jurisdiction. As noted by the IRT “[t]he IRT considered whether the IP Claims Service should also extend to the post-launch period. The IRT concluded that it was unnecessary to extend the IP Claims Service post-launch because of the protections afforded by the URS that the IRT also recommends herein.”

(<http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>, footnote 6.) Further, there are many commercial IP watch services available.

Whether to make both the Trademark Claims Service and Sunrise mandatory was also considered by the STI. It was decided that the gTLD registries would be required to have either one or the other. While neither system can ensure against nefarious behavior, there is no system that can and both are additional and mandatory layers of protection that were previously not required of the gTLD operator. There are a number of post-launch rights available to any trademark holder to the extent a gTLD or domain name is registered and such registration causes a cognizable harm.

Clearinghouse Provider Services

Summary of Comments

RPM and Process Patent considerations. To prevent conflicts among RPM providers in the future, the following language should be added to Module 5: “All potential service providers for RPMs and the trademark clearinghouse, should clearly indicate if they have any pending or accepted filings related to process patents describing a TLD Rights Protection Mechanism.” *EnCirca (9 Dec. 2010).*

Provision of ancillary services by the Clearinghouse provider or third parties could lead to a loss of confidentiality in data provided to the Clearinghouse. Any data submitted to the Clearinghouse should be held only by the Clearinghouse and used for the sole purpose of assisting with the implementation of gTLDs. *Telstra (23 Dec. 2010).*

Analysis of Comments

The role of the Clearinghouse set forth in the most recent version of the Guidebook adopts the intent of the IRT, as considered by the STI, which is to ensure that the Clearinghouse Provider does not obtain any competitive advantage over competitors for ancillary services. Thus, absent a license from the trademark holder, the Clearinghouse database will only be permitted to hold data for the purpose of implementing the service of the Clearinghouse. The Provider(s) will be selected through an open bidding process, any relevant data bearing on its ability to be an impartial provider or otherwise impacting the competitiveness of others will be evaluated. All relevant information will be disclosed and evaluated.

Uniform Rapid Suspension System (URS)

Key Points

- IRT recommendations remain intact:
 - the current URS proposal expands the types of trademarks that can use URS to Clearinghouse-validated marks, marks protected by treaty or statute, and those that are court-validated.
 - the IRT proposed, and the STI adopted, a clear and convincing burden of proof.
 - the IRT proposed, and the STI adopted, suspension as the remedy.
- Complaint forms might be shortened to lower expected costs.

General

Summary of Comments

The URS is a strong tool for trademark owners in cases where there is a clear and actual infringement of their trademark rights. *Demand Media (8 Dec. 2010).*

We cannot emphasize strongly enough that the URS as outlined in the Guidebook is not that which was originally envisaged by the IRT. The original IRT proposal should be revisited to remedy this situation. *Hogan Lovells (9 Dec. 2010)*. *Adobe Systems (10 Dec. 2010)*. *INTA (14 Jan. 2011)*.

There are still serious procedural issues and open-ended questions about the URS which are of practical significance to the entities that may choose to administer this system. These matters need to be addressed before the Board can vote to approve the URS. ICANN should include the NAF in discussions regarding the implementation of the URS before it is finally approved. *NAF (8 Dec. 2010)*.

Registration-driven compromise risks impacting the effectiveness and efficiency of the URS to the point of missing the fundamental intent behind the WIPO and IRT proposals. The imbalance consists in such features as: panel appointment even in default cases; panel examination of possible defenses in default cases; possibility of appeal during 2 years from default; higher burden of proof; uncertainty as to results (possible gaming and revolving-door monitoring); use of conjunctive bad faith registration and use; limiting marks forming basis of URS claim to either so-called substantive review or clearinghouse validated marks (with cost and time implications); apparent translation requirements; seeming option for re-filing; possibility of de novo appeals; and significant timelines.

Further, there are unbalanced word limits, language issues possibly affecting effectiveness of notice; ambiguity about the language of the complaint; failure to contemplate privacy/proxy services; non-refundable fees for minor administrative deficiencies; default notice by post following on prior complaint notice by post; inefficient time extension modalities; unclear rationale for an appeals layer; unclear concept of panel certification; lack of parity in consequences for a repeat abusive registrant; unclear provider tracking obligations that exclude registrant behavior. *WIPO Center (2 Dec. 2010)*. *IACC (9 Dec. 2010)*. *Hogan Lovells (9 Dec. 2010)*. *MarkMonitor (9 Dec. 2010)*. *News Corporation (9 Dec. 2010)*. *NCTA (10 Dec. 2010)*. *MARQUES/ECTA (10 Dec. 2010)*. *CADNA (10 Dec. 2010)*. *BBC (10 Dec. 2010)*. *RE/MAX (10 Dec. 2010)*. *Verizon (10 Dec. 2010)*. *IHG (10 Dec. 2010)*.

As the BC stated in its earlier comments, the URS is not a rapid process and takes nearly as long as using the UDRP with a higher burden of proof and provides little certainty. *BC (6 Dec. 2010)*. *IACC (9 Dec. 2010)*. *Hogan Lovells (9 Dec. 2010)*. *MarkMonitor (9 Dec. 2010)*. *AT&T (10 Dec. 2010)*. *Telstra (23 Dec. 2010)*.

Panels should not be appointed in default cases. Adequate reporting should be instituted to prevent gaming. *MarkMonitor (7 Dec. 2010)*.

The details and operation of the URS should be evaluated after a trial period to ensure that it is fulfilling its intended purpose of being fast, efficient and fair. *Telstra (23 Dec. 2010)*.

Analysis of Comments

The URS continues to be the subject of comments by various stakeholders. There are some that applaud the new RPM and others that have expressed a concern that it is not going to be effective or that it is simply too different than what was proposed by the IRT. All comments are being considered in the development of the current URS proposal.

The IRT proposal was reviewed by the STI and was modified, but the concept of the URS has not been challenged. The proposal underwent further significant public comment; the modifications are a direct result of such comment. While comment seems to suggest that the current proposal is diametrically different than the IRT URS proposal, many of the IRT recommendations remain substantially the same in the current version of the URS, or trademark protections have been enhanced. As some examples:

- The response time is the same - 14-days (the current version does provide for a one-time extension of no more than seven days if a good faith basis exists).
- Which trademarks can be the basis of a URS claim is broader in the current URS proposal than in the IRT proposal – the IRT required finding that domain name is identical or confusingly similar to a mark in which the Complainant holds a valid trademark registration issued by a jurisdiction that conducts substantive examination prior to registration; the current URS proposal expands this to Clearinghouse-validated marks, marks protected by treaty or statute, and those that are court-validated.
- The burden of proof is the same – clear and convincing evidence.
- The requirement for showing bad faith is the same – must be registered and used in bad faith.
- The fact that Examination is required even in default cases is the same.
- The time for a Panel to render a decision is limited in current URS proposal (goal of three (3) days, no later than 14 days) – there was no such limitation proposed by the IRT.
- The remedy is the same - suspension.
- The length of suspension in the current URS proposal can be extended by a year after current registration expires – there was no such possibility of extension in the IRT proposal.
- The evil intended to be addressed is the same – clear-cut cases of abuse.

The changes that have been implemented have been the result of input from a numerous stakeholders and reflect the attempt to balance the rights of trademark

holders and legitimate registrants that may happen to have registered domain names that involve a trademark from somewhere in the world.

Questions about the method of initiating a complaint, whether to have a form, how defenses should be reviewed and the languages in which the proceedings have been conducted have been raised and addressed during the various public comment periods. At every stage of the review, the intent has been to provide a rapid rights protection mechanism directed toward the clearest cases of trademark abuse. The nature of the proceedings is believed to achieve that end.

Discussions are continuing and some additional implementation detail revisions will likely be made, for example, creating a form complaint that reduces the 5000-word limit to 500 words. The 500-word limit might not, however, be placed on the respondent, as the respondent will be required to describe the legitimate basis upon which the domain name is registered. The respondents word limit be decreased from 5,000 to something less, possibly 2,500 words, in order to decrease the examinations panel's time requirements and thereby enhance circumstances for a relatively low cost process. (Remember that in the vast majority of cases, it is expected that the respondents will not answer.)

Making these changes to the complaint form is consistent with the IRT and the STI proposals. The IRT proposed certain fields to be included in the complaint form and the IPC has proposed an additional 500-word limited text box for explanatory language. The STI's proposal is consistent with the IRT's recommendations. The STI suggested: "The form of the complaint should be simple and as formulaic as possible. There should be reasonable limits on the length of complaint and answer. The complaint should allow space for some explanation, and should not be solely a check box." The final recommendations will be explored and determined prior to issuance of the final guidebook.

The GAC has also indicated that it would be providing to ICANN some specific implementation recommendations for the URS, which will be discussed during the GAC and Board consultations in Brussels and during the March ICANN Public Meeting.

Other specific questions and comments about particular aspects of the proceedings will be addressed in the sections below.

Procedures

Summary of Comments

Time Periods.

The URS should be implemented so that it is substantially faster than the UDRP. *MarkMonitor (7 Dec. 2010).*

Regarding the one year later review of the URS after it takes effect; the flaws in and limitations of the current URS proposal are so patent that it is absurd to permit a year of what will undoubtedly be ineffectiveness before addressing them. *NCTA (10 Dec. 2010)*.

Response time.

There is no explanation why the response time was shortened from 20 days to 14 days. The 14-day period is unfair to individuals who might not expect such URS notices and might not even know about the URS process. This also contradicts 4.3, which says that notices are sent by postal mail, which has widely varying delivery times, especially for international delivery. The URS provider should be required to guarantee the delivery within a defined time frame (e.g. by using express courier services), which would also provide a proof of delivery. The 20 days to file a response to a URS request should then start at the time of the paper mail delivery. Further, notice to registrants by email is unreliable. There is no guarantee that an email is delivered at all since it could be caught by spam filters, tampered with along the way, etc. *P. Vande Walle (Module 5, 24 Nov. 2010)*. *NCUC (10 Dec. 2010)*.

The 20-day URS response time should be restored or extensive guidance should be provided regarding the grounds for which a 7-day “good faith “ request for response extension will be granted. *ICA (9 Dec. 2010)*.

The Board erred in unilaterally reducing the response time from 20 to 14 days. This decision is unreasonable and goes against the Board not making policy except where the community has failed to reach consensus. The STI came to general consensus on a 20-day period. It is all the more unreasonable given that the word limit for the complaint is set at 5,000 words. *A. Greenberg (, 9 Dec. 2010)*. *ALAC (10 Dec. 2010)*. *A. Greenberg (10 Dec. 2010)*.

The 14-day response time denies applicants sufficient time to obtain a lawyer and is inconsistent with ensuring that registrants receive actual notice of a complaint. The time to respond should be a function of the age of the domain name –14 days + 5 days x age of domain in years (e.g., a registrant might get 5 more days to respond for every year that the domain name has been registered). This would ensure that complaints are brought in a timely manner—i.e. within the first year. Note: The URS section 9.6 is inconsistent—it still talks about a 20-day response period. *G. Kirikos (13 Nov. 2010)*.

Examination–timing correction (9.6). This section contains on old timeline. The new timeline is 14 days. *NAF (8 Dec. 2010)*.

URS page limits.

The word limit should be less than 5,000 words for complaints/responses. It may even be helpful to impose a page limit on exhibits. *NAF (8 Dec. 2010)*. *Hogan Lovells (9 Dec. 2010)*.

The word limit should be reduced to a much smaller number such as 500 words. *IPC (9 Dec. 2010)*.

Shorten the permitted length of the pleadings to make the Determination easier for the Examiner, which owing to anticipated lower fees, will likely be preparing very short decisions. *NAF (8 Dec. 2010)*.

Administrative Review.

Forcing a dismissal for easily corrected errors wastes time. Parties should be allowed to amend the complaint to bring it into compliance rather than require a dismissal and subsequent refiling. As currently written these rules will not make things faster and will increase expense. *NAF (8 Dec. 2010)*.

It is a matter of fundamental fairness to let a respondent respond however they can with the Examiner making inferences from omissions as appropriate. The UDRP does not provide for any compliance check for responses. It should not be incumbent on the Provider to translate all documents –it is logical to pass them on to the panel that speaks the language. In addition since all submissions are forwarded to the Examiner whether they are compliant or not (URS 5.6 says Providers will check for deficiencies but says nothing about what if a Response is not compliant), a deficiency check would only use up energy and add time to the process. *NAF (8 Dec. 2010)*.

Fees.

This rule has the effect of extending the case time. It is likely that a significant number of respondents will wait the full 30 days after a Determination to respond, thereby increasing the average time a case would take under the URS as opposed to the UDRP. *NAF (8 Dec. 2010)*.

A late answer should not be allowed under any circumstances without a fee and the time for filing a late response should be limited and only allowed upon a showing of good cause. *NCTA (10 Dec. 2010)*.

There should be a fee where a response is filed late or there is no incentive to deal with this in a timely manner. *BBC (10 Dec. 2010)*.

There should be a fee for filing a response to a complaint. *LEGO (11 Jan. 2011)*. *VKR (12 Jan. 2011)*. *Arla Foods (11 Jan. 2011)*. *Vestas (11 Jan. 2011)*.

The ICANN Board should encourage the URS provider to provide discounted fees for complaints brought by verified not-for-profit organizations/NGOs. *P-NPOC (1 Dec. 2010)*. *Red Cross (9 Dec. 2010)*.

URS 1.2(d). Add word “shall” instead of “should” if it is a requirement that the complainant include a copy of the currently available Whois information. *NAF (8 Dec. 2010)*.

English translation issues (4.1). Is the Registrant's presumed language the language predominantly used in the country listed for the Registrant in the Whois? If the Whois has a privacy shield, is the location of the privacy services used? If the respondent cannot read the complaint because it is in English, clarification is requested that it is not the Provider's job to translate the complaint (only the letter is in English, not the complaint itself). Is the Response accepted if it is in the non-English language? *NAF (8 Dec. 2010)*.

Notices (4.3). This section should be clarified that it applies to all notices under Rule 4, not to all correspondence about the case. Also, if the Whois lists a privacy service, does the Provider need to do anything else with respect to the notice? *NAF (Dec. 2010)*.

Time Limits--exceptions (URS 4). The time limits should include an exception for weekend/holiday deadlines, or the Providers should be granted the power to make Supplemental Rules that help smooth out case administration hassles. *NAF (Dec. 2010)*.

Case Management

Permit/offer an incentive to Providers who use an entirely online portal/case management interface (supplemented with paper/fax notices of commencement), which can streamline the process of sending and receiving documents. *NAF (8 Dec. 2010)*.

Consider what next steps will be if a Registry Operator does not notify the Provider of the lock in a timely manner. How long must the Provider wait to proceed (if instructed to proceed). A best practices document accompanying the AG could iron this out ahead of time. *NAF (8 Dec. 2010)*.

URS 1.2(d). Add word "shall" instead of "should" if it is a requirement that the complainant include a copy of the currently available Whois information. *NAF (8 Dec. 2010)*.

Analysis of Comments

The time in which a URS proceeding takes place has been the subject of extensive comment. While some advocate for a 20-day response period, and oppose the recent change to a 14-day response period, many have suggested that the timing should be even shorter than 14 days. In response to public significant public comment, the Board recently resolved that the response time be shortened from 20 days back to the 14 days proposed by the IRT. The latest version of the URS reflects this change. (See <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>)

To the extent there are concerns about the time in which it takes for a registrant to get notice and prepare a defense; a seven-day extension of time can be obtained if there is a good faith basis for such an extension. Further, limiting the complaints as the trademark interests have suggested, to a form complaint with a 500-word limit explanation, should simplify the effort required for responses. Finally, in light of the fact

that relief from default is virtually automatic if a response or appeal is filed within a two-year time period, there should be no concern that initial a response time is limited to 14 days.

There is no process that can address the clear-cut cases of abuse and balance the rights of the registrant that can take place immediately. The trademark holder and the registrant each have to have an opportunity to present their positions and should have the right to have their positions evaluated. The procedure currently envisioned for the URS attempts to balance each of these needs and the timing for the complaint, response, and prompt review and prompt decision making is intended to reflect the need for speedy resolution while ensuring an opportunity to be heard. The notice provisions are similarly intended to give these balancing need effect. No one method of service is fool proof. email can go unanswered, regular mail takes time. Recognizing the pros and cons of each method of service, process must be delivered by post, electronically and by fax to maximize the possibility of timely notice.

It has been indicated that 14-day response time needs to be incorporated into other sections of the Guidebook to make timing provisions consistent, (i.e. Section 9.6) it will be. Thank you.

With respect to comments about the length of the complaint and response, please see the analysis in the “General” Section above.

Although some have suggested that dismissal of complaints that do not comply with requirements is a waste of time, allowing an amendment is unfair to the registrant who is also entitled to a prompt resolution. The goal of the URS is efficient and prompt resolution, if the complaint does not meet the standards, it will be dismissed.

Both the complaint and the response will be checked for compliance. One comment suggests that it is unfair for responses to be reviewed for compliance because a respondent should be permitted to answer in any way they wish to do so. While the respondent is free to assert any defense or fact that would negate a claim of bad faith, procedural requirements must still be adhered to for the process to remain efficient and fair to all participating in it. It is not anticipated that the compliance check will in any way impede the respondent’s ability to assert legitimate defenses to any claim.

Some have commented on the fees for instituting or responding to a URS proceeding. As set forth in the Guidebook, it is anticipated that the Provider will set them and that in keeping with the goal of the URS to be a cost effective RPM, they will be approximately \$300 US. In terms of a response fee, the IRT suggested one, but the STI suggested it be only in the case of a late filing (30 days after the due date). The STI provision is what has been accepted, as it comports with the nature of the quick, efficient and low cost RPM.

It has been suggested that a discount be given to complaints brought by verified not for profit organizations or NGOs. What constitutes a verified not for profit organization may

be difficult to ascertain on an expedited basis thereby undercutting the very core of the URS remedy. All the same, whether to afford such a discount and the manner in which it would be applied will be left to the sole discretion of the Provider. Fees are paid directly to the provider, not to ICANN so that there is no fee that ICANN could forego.

The method of notice and the language in which notice should be given have been the subject of comment, as well. It has been suggested that Section 4.3 be modified to make it clear that it applies only to Section 4. This clarification will be made.

All of the day-to-day procedures have not been outlined in the Guidebook, including those relating to translations. The Provider ultimately will additional rules and procedures. It is anticipated that such procedures will include what happens if a Registry Operator does not notify the Provider of the lock in a timely manner as well as the length of time the Provider can wait to proceed (if instructed to proceed). However, the suggestion about not including weekends or holidays in the timing of the URS procedures would not be workable given the number of holidays recognized throughout the world. Public discussion indicates that 14 calendar days is the appropriate time in which to respond.

All specific word change suggestions will be considered and made where appropriate. Thank you.

Burden, Evaluation and Standards

Summary of Comments

Grounds for complaint. The URS should come into line with developments in DRS provision around the world. The grounds for a complaint should be that a name has been registered or is being used in bad faith. The link to the UDRP should be broken. *MARQUES/ECTA (10 Dec. 2010).*

Burden of proof.

The URS is weak in that the burden of proof is on the trademark owner to prove that the registrant has no legitimate interest in the domain name. *LEGO (11 Jan. 2011).* *VKR (12 Jan. 2011).* *Arla Foods (11 Jan. 2011).* *Vestas (11 Jan. 2011).*

It is not clear how the burden of proof (clear and convincing evidence) can be met within a form of complaint that is as “simple and formulaic as possible.” There is a tension between requiring a relatively high standard of proof and streamlining the process by reducing the evidence needed to be provided by trademark owners. This issue requires further consideration; additional guidance should be provided regarding how it is intended that trade mark owners might satisfy the standard. *Telstra (23 Dec. 2010).*

The URS suffers from a higher burden of proof than the UDRP. *MarkMonitor (7 Dec. 2010).*

Defenses. The proposal is one-sided, adding defenses (DAG 4.0) from Nominet's dispute resolution policy but failing to include presumptions supporting a finding of abuse. Virtually all of the changes made since the initial RPM proposals have made it more difficult to prevail in a URS proceeding. *NCTA (10 Dec. 2010).*

Evaluation.

The language of section 1.2.f.i should be revised as follows: "that (i) is registered (not just applied for); and has been through the relevant period for opposition applied in the country of registration; and is not subject to a pending opposition, revocation or cancellation action; and is in use;" A new footnote should be added to accompany appearance of the phrase "in use": "It will be sufficient for the rights owner to make a simple declaration of use." Footnote 1 should be deleted (now redundant). This revision, requiring use of a trademark in order to enter the clearinghouse database, is designed to create qualification hurdles high enough to exclude cyber squatters seeking to register terms in the clearinghouse without setting the hurdle so high that legitimate rights owners cannot qualify. *BC (6 Dec. 2010).*

URS section 1.2(f) (i) should remove the reference to evaluation on relative grounds and evaluation of proof of use. *IPC (9 Dec. 2010).*

We urge ICANN to eliminate discrimination on the grounds of substantive evaluation in the URS context. *Hogan Lovells (9 Dec. 2010).* *LEGO (11 Jan. 2011).* *VKR (12 Jan. 2011).* *Arla Foods (11 Jan. 2011).* *Vestas (11 Jan. 2011).*

The current proposal's "use" requirement severely reduces the number of marks that will be eligible for protection under the URS. This change is another example of a process that is being rushed without adequate opportunity for meaningful input and review. *NCTA (10 Dec. 2010).*

Analysis of Comments

Many have commented on the burden of proof in a URS. Some suggest that clear and convincing is appropriate while others have claimed that the burden of proof is too high. The intent of the URS is to address the most clear-cut cases of abuse. As such, a higher burden of proof is appropriate. The IRT has stated that contestable issues are not appropriate for URS resolution. (See page 34 of final IRT Report located at <http://www.icann.org/en/topics/new-glds/irt-final-report-trademark-protection-29may09-en.pdf>). Given that directive, the clear and convincing standard is appropriate. At the same time, there has been a suggestion that including defenses somehow impermissibly shifts the burden or makes it too difficult to prevail. None of the defenses listed are absolute, nor do they create a presumption on behalf of the registrant. They are intended to give notice to complainants as to what will constitute clear cases of abuse and what will not. No presumptions exist for either party.

The type of trademark that can form the basis of a complaint has also been the subject of public comment. Some have urged that the requirement of a substantive evaluation

should be removed. While protections are given for a broad set of trademarks – even broader than the URS envisioned - It should be noted that since the URS is designed to remedy clear-cut cases of infringement in an expedited fashion, the URS states that certain registered or otherwise protected trademarks will be suitable for review in a URS proceeding. As noted by the IRT in its Final Report on page 38 the “IRT recognizes that entry standard for utilizing the URS is more limiting than the standard provided in the UDRP, which permits claims to proceed based on any registration of trademark rights or common law rights. Parties that do not meet the higher entry standard proposed for utilization of the URS may, of course, still proceed with claims under the UDRP or in courts, as appropriate.” (See <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>)

The Board recently resolved that the marks must undergo substantive review for inclusion in the Trademark Clearinghouse and to form the basis of a URS. (See <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.7>) In that regard, the Board stated,

Substantive Evaluation: The Applicant Guidebook will provide a clear description of "substantive evaluation" at registration, and retain the requirement for at least substantive review of marks to warrant protection under sunrise services and utilization of the URS, both of which provide a specific benefit to trademark holders. Specifically, evaluation, whether at registration or by a validation service provider, is required on absolute grounds AND use of the mark. Substantive evaluation upon trademark registration has essentially three requirements: (i) evaluation on absolute grounds - to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds - to determine if previously filed marks preclude the registration; and (iii) evaluation of use - to ensure that the applied for mark is in current use. Substantive review by Trademark Clearinghouse validation service provider shall require: (i) evaluation on absolute grounds; and (ii) evaluation of use.

Some have suggested that requiring validation for use would result in discrimination against certain holders of certain registrations. As stated previously, it is not believed that such a requirement would lead to discrimination. To the contrary, validation of use is intended to provide a mechanism so that all marks receiving the same type of advantage from a particular RPM are evaluated at substantially the same level.

While marks must be validated for use in order to serve as the basis for a URS proceeding, the Clearinghouse Validation Service Provider, or possibly even another provider, will provide those validation services if not completed at trademark registration. While investigation of what validation would require is still under review, consideration is being given to requiring a simple declaration from the trademark holder that the mark has been in use and provision of a sample of that use in commerce (such as a label, advertisement, screen shot or the like). The IRT and the STI both agreed, in essence, that validation for use is an appropriate limitation for marks serving the basis for a URS proceeding

Default

Summary of Comments

Panels should not be appointed in default cases. *MarkMonitor (7 Dec. 2010)*.

The default section 6 has no substantive effect and no practical significance (e.g., all default cases proceed to examination). If a declaration of default is intended to have a substantive effect that needs to be clearly stated. *NAF (8 Dec. 2010)*.

Consider eliminating an Examiner Determination for Default cases (this would make the Default section have more meaning). This would also eliminate questions about having multiple Determinations for one case. *NAF (8 Dec. 2010)*

In section 6.2 - mail and fax notifications are not necessary. If the complaint was served with mail and fax notices and there is no response, sending a default notice by mail and fax is unlikely to provoke a response. Email should be sufficient; other methods increase cost and time. *NAF (8 Dec. 2010)*.

Revise Section 8.4. As currently written it effectively ensures the dismissal of all URS complaints in which no response was submitted. It should be revised as specifically provided for in Microsoft's comments. *Microsoft (9 Dec. 2010)*.

By whom will the Registrar be prohibited from changing content? What is the penalty if the Registrar changes content? Who monitors for content changes? Why is it that the content cannot change during the "default period" but can change during the response period? *NAF (8 Dec. 2010)*.

Section 6.3 should be located in the appeals section, not the default section, or placed in a new section called Re-opening. *NAF (8 Dec. 2010)*.

Regarding 6.4, who tracks what the original IP address was? *NAF (8 Dec. 2010)*.

The current proposal invites gaming and abuse by registrants. Assuming that proper notice was given, absent good cause NCTA strongly opposes allowing a default determination to be vacated or reviewed. In the event that the URS allows default determinations to be revisited, the window for doing so should be brief and the registrant should be required to pay a substantial fee. *NCTA (10 Dec. 2010)*.

Analysis of Comments

Several comments have been posed relating to the default provision of the URS, and the language providing that all complaints will be reviewed. Some have suggested that default should result in an automatic win for the Complainant. The decision to provide for examination even in cases of default was proposed by the IRT. Thus it is part of the

current URS proposal. The reason for examination in the case of default is to insure that the remedy will be applied in a clear-cut case of abuse. By the same token, the mere fact that all complaints are reviewed does not mean that they will be dismissed as one commenter has suggested. It simply means that the goal of the URS, to stop clear-cut cases of infringement, is maintained.

The manner in which default applies has also been the subject of public comment. Some have urged that allowing default cases to be reopened by filing a late response diminishes the effectiveness of the remedy or encourages gaming. Default will continue to remain a viable remedy and it is unlikely that gaming will result since there is no incentive to answer after default has been entered. However, there are reasons to allow review of default. There are cases where a legitimate domain name registrant was denied an opportunity to be heard. In those cases, the registrant should be heard. To that end, providing notice of default by mail fax and email will be continued to insure that the registrant is notified of the default. (Remember that, in the vast majority of cases, no response is expected and this provision will rarely come into play. When it does, it provides a cheap remedy for a possible error.)

The changes that can be made to the content of the web site and the parties to be held accountable for such changes have also been the subject of comment. Some of the implementation details that are procedural will continue to be explored and enhanced throughout the pendency of the URS. However, the questions will be reviewed and considered and additional details, if feasible, will be included in the final version of the URS.

Appeals

Summary of Comments

Timing for Appeal.

A rendered URS decision should not be subject to appeal for two years after the registration period of the name expires. *MarkMonitor (7 Dec. 2010)*. *BBC (10 Dec. 2010)*.

The period should be shortened to 90 days or the expiration of the domain, whichever is shorter. *IACC (9 Dec. 2010)*.

Many URS cases will effectively be exponentially longer because a case that was once closed in around 45 days will now need to remain available for re-opening anytime up to two years later. *NAF (8 Dec. 2010)*.

The two-year de novo review (6.4) raises many practical issues: is the complainant allowed to supplement its pleadings now that time has passed? Is the original Determination amended (by whoever rehears the case) or is a second Determination published, and do the two have to be linked? Is the complainant obligated to keep the Provider apprised of changes to counsel? If not, what actions on a Provider's part will

constitute notice to the Complainant that the case is being re-opened? *NAF (8 Dec. 2010)*.

The de novo review standard allows the unsuccessful appellant to simply hope for a different decision by a new reviewer; this end result only favors one party—the domain name registrant. *NCTA (10 Dec. 2010)*.

Domain Name resolution. BBC objects to the proposal that where the registrant files a request for de novo review the domain name then resolves back to the original IP address. The status quo should be maintained pending the outcome of any review. The domain name should resolve back to the original IP address only where the response has been filed within a limited grace period, i.e. a few months at most. *BBC (10 Dec. 2010)*.

Abuse (URS 11.3). This section is ambiguous. If the appeal can be made to the same provider, and if any provider/examiner fee is paid by the appellant, are any additional pleadings allowed by either the appellant or the original registrant? What is the remedy—overturning the entire Determination or just the finding of abuse? Does the second examiner modify the first examiner’s written Determination? Can a substantive appeal be filed simultaneously with the appeal of the finding of abuse? Should Providers have a special sublist of appellate examiners, and should those examiners be 3 member panels? *NAF (8 Dec. 2010)*.

New evidence. Barring an appellant from introducing any new evidence whatsoever on appeal should not be characterized, as ICANN does in the DAG, as “handicapping” an opponent. It is a limitation but a fair one that is consistent with the goal of the URS in providing a cost-effective, expedited process. *NCTA (10 Dec. 2010)*.

Process questions. The appeal process is given only three short paragraphs; it raises many procedural issues, including: How “limited” is the right to introduce new material? Is it limited merely by the Provider’s page/word constraints? What are the timelines for the appeal (briefs, Determination)? Can an appellate examination be done by a three-member panel if one or both parties agree? If a complainant loses its URS case but prevails on appeal does the period for the “non-resolving domain name” start with the URS filing or with the time the appellant prevailed? Can a complainant appeal under 11.8 be brought simultaneously with the substantive appeal? What happens to the publicly available URS Determination if an appeal overturns the Determination below (should it still be publicly available?) *NAF (8 Dec. 2010)*.

Analysis of Comments

The time in which to file an appeal has been the subject of comments. Some have inquired as to why two years has been selected; some suggest that this period is too long. The two-year period only applies if relief is sought from Default. Otherwise the respondent has 14 days as set forth in Section 12.4. Gaming is not likely to occur since section 12.3 provides that “Filing an appeal shall not change the domain name’s

resolution.” While the IRT did not propose an appeal to the URS provider, as the STI did, the IRT did suggest the possibility of a URS Ombudsman, at least in cases where the complainant prevails. Understanding that the review by the URS Ombudsman would be limited to abuse of discretion or the process by the Examiner, the STI suggested that the review be de novo, which is what has been adopted. In response to comments that the STI proposal allowed for appeal at any time, the current URS proposal limited that to two years.

That an appeal can be de novo has also been the subject of comments. Although some have suggested it will benefit the registrant, such a characterization does not seem accurate. The URS examiner will only have a limited evidentiary submission. Thus, it is not likely that de novo review would lengthen the process, nor would it change the resolution of the domain name as one comment suggests. Section 12.2 is clear that “Filing an appeal shall not change the domain name’s resolution.” Given the bad faith standard, independent review in such limited circumstances seems to be in the best interest of the parties. Accordingly, the de novo standard should remain.

The evidence limitation set forth in Section 12.2 was suggested by the STI, to be a fair limitation on final resolution consistent with the goal of the URS in providing a cost effective and expedited process. Any other characterization of the process would be inaccurate. The IRT did not provide any comments with respect to potential additional evidence submission upon appeal.

The specifics of the limitation, as well as the briefing requirements and timing will be left to the Provider to determine and ample notice will be provided.

(Remember that, in the vast majority of cases, no response is expected and the appeal provision will rarely come into play. When it does, it provides a cheap remedy for a possible error.)

Remedies and Fee Shifting

Summary of Comments

Transfer or first option to register.

Given the high standard for prevailing on a URS complaint, either transfer or providing the prevailing complainant with the first option to register the domain name after the suspension has run its course would be a far more equitable and reasonable remedy. In light of all the changes made to the URS proposal, the nature of the available remedies should be revised to restore balance and to encourage trademark owners to take advantage of the URS. *NCTA (10 Dec. 2010)*.

The complainant should have the chance of requesting the transfer of a domain if there is no response or a complaint is upheld. *MARQUES/ECTA (10 Dec. 2010)*. *Adobe Systems (10 Dec. 2010)*. *Verizon (10 Dec. 2010)*.

From the perspective of customers who are searching for the website of a major brand, finding a page with information about the URS is not particularly helpful and may be detrimental to the brand. Because the URS is intended to operate only in clear cases of cybersquatting, if this is found to be the case then there is no reason not to transfer the domain name to the complainant. *Telstra (23 Dec. 2010)*.

The successful complainant should be given first refusal to register the domain name when it next comes up for renewal to avoid a perpetual cycle of cyber squatting risk, domain watching and URS actions. *BBC (10 Dec. 2010)*.

Interim remedy. Given that a domain that has been locked after a complaint is filed still resolves and is visible for a period of time, there should be an interim remedy at least in cases of significant potential harm to a trademark owner and the public (akin to an interim injunction in court actions). *BBC (10 Dec. 2010)*.

Permanent remedy. As noted in previous comments, the remedy for abusive use needs to be a permanent one. By only suspending the domain name and forcing the Complainant to defensively register it under their trademark, it has become more cost consuming than it should be. Clarity is an absolute must in these provisions before this new gTLD launch can occur. *IHG (10 Dec. 2010)*.

Implementation timing. The remedies section does not address how long the Registry has to implement the Determination. NAF has seen countless cases where the complainant prevails but the registrar drags its feet for up to a year to transfer the name. *NAF (8 Dec. 2010)*.

Abusive Complainants.

The current version of the applicant guidebook still includes the lowered and insufficiently rigorous standards for imposing penalties on complainants with no comparable provisions for registrants who have been found to have made repeated abusive registrations. No rationale for these changes was or has been provided by ICANN. *NCTA (10 Dec. 2010)*.

URS includes a draconian two-strike policy for abusive complaints and deliberate material falsehoods. It is unjustifiably mired by its procedures (e.g. obligatory panel review for respondent default, 2-year statute of limitations for de novo appeal from default, etc.) *IOC (29 Nov. 2010)*.

Loser pays.

Losers should pay in scenarios where Trademark Claims have been invoked. *MarkMonitor (Module 5, 7 Dec. 2010)*.

A loser pays model is not unprecedented and would go a long way to protect consumers by providing a necessary disincentive to cyber squatting. While INTA realizes that this requires further discussion and input from stakeholders, the concept of allowing a registrant the opportunity to opt-in or opt-out of a URS proceeding upon

notice of a complaint is worth analyzing. A loser pays model would help create a system that curbs the rampant cyber squatting that is already seen in the existing gTLD space and which is further expected in new gTLDs, by rightfully putting the cost on the domain name registrants who infringe on intellectual property, or at least reducing the expense by foregoing full proceedings where registrants have no real interest in defending a domain registration. If ICANN is unwilling to embrace the numerous changes and proposed mechanisms that would address nefarious activities on the front end, then ICANN should work with the community to put appropriate “teeth” in the mechanisms that deal with these activities on the back end. *INTA (8 Dec. 2010)*.

There is no loser pays mechanism in the URS, which would be essential in an URS of any real value. *LEGO (11 Jan. 2011)*. *VKR (12 Jan. 2011)*. *Arla Foods (11 Jan. 2011)*. *Vestas (11 Jan. 2011)*.

A loser pays model would end 90% of domain infringement and minimize the negative economic impact many businesses fear would result from introduction of new gTLDs. *MARQUES/ECTA (10 Dec. 2010)*.

Domain lock for serial infringers. A complainant who files three abusive URS complaints can be banned from using the URS, but a serial infringer can lose 1,000 complaints without penalty. The burden should be shifted so that a serial infringer who has lost 3 complaints automatically has his domain locked. *MARQUES/ECTA (10 Dec. 2010)*.

Analysis of Comments

Many have commented on the remedy available to a URS complainant. Some have suggested that the remedy be a transfer, others have suggested that a right of first refusal for the domain name. The IRT proposed suspension, not transfer. Since the URS is intended to be a prompt remedy for clear cut cases of abuse, the remedy reflects the evil the RPM is designed to prevent. While the first refusal alternative has been suggested, given that the URS exists only for clear-cut cases of abuse, on balance, suspension was deemed the appropriate remedy, so the first refusal will not be adopted. However, recall that the complainant will have the right to extend the registration, and thus the suspension, for an additional year. The extension provides that the domain name will be suspended significantly longer than the period recommended by the IRT.

The IRT envisioned that if a complainant wants the domain name transferred to it, the complainant can avail itself of other available alternatives, including seeking injunctive relief in an appropriate court or initiating UDRP proceedings.

The time in which the Registry has to implement the decision of the Provider has also been the subject of inquiry. Adding more specificity will be considered and included in the final version of the URS proposal as is deemed appropriate.

Some have questioned the circumstances under which a complaint can be found to be abusive. It has been suggested that the remedies for abusive complaints and material falsehood are not meaningful because they are subject to review and appeal. Upon review, in light of the standards, and the fact that the conduct can be sanctioned, it is believed that the rights of review and appeal should be maintained. Furthermore, doing so is not likely to under cut the remedy in any way. Rather, it will preserve the remedy by maintaining the integrity of the process.

Fees to be charged to the complainant and to a party responding have been the subject of comments, as well. A straight loser pays system was rejected by the IRT. The IRT noted that, "it is important to ensure that individual domain name registrants do not feel they cannot afford to file an answer. Second, there was concern that with the number of defaults that will likely occur, using the UDRP as a model, and the prevalence of false Whois information, recovery of such fees would be next to impossible." It was also thought that such a system might result in abuses. At present no effective loser pays method has been presented for consideration.

The fact that registrants who have lost numerous proceedings should have domains locked was not proposed by the IRT and thus has not been included as part of the latest URS proposal. Such a proposal requires careful consideration. It may, for example, incent the falsification of Whois information.

Post Delegation Dispute Resolution Procedure (PDDRP)

Post Delegation Dispute Resolution Procedure (PDDRP)

KEY POINTS

- The registry should be liable for its affirmative conduct resulting in infringement of trademarks; the standards for the PDDRP are crafted to achieve that goal.
- The requirement for clear and convincing evidence was proposed by the IRT and implemented. Based on future discussion, this might be amended to a preponderance of the evidence requirement if the high bar set by the standards, as currently written, remain in tact.
- Showing use of a mark is an important requirement and could be as simple as providing a declaration from the trademark holder that the mark has been in use, along with a sample showing that use in commerce (such as a label, advertisement, screen shot or the like).

General

PDDRP Should apply to registrars.

The PDDRP should also target registrars. *IOC (29 Nov. 2010)*

Where ICANN appears to be moving toward vertical integration it would appear consistent to apply the same principle to the PDDRP and comparable mechanisms so as not to exclude such lower-level registration intermediaries. *WIPO Center (2 Dec. 2010). CADNA (10 Dec. 2010).*

The PDDRP as proposed goes well beyond requiring a complainant to show some specific harm but rather requires proof that the gTLD registrar has a pattern of registering domain names that specifically infringe the complainant's marks. Despite the degree of abusive conduct there would be no basis for a PDDRP complaint against a gTLD operator where no single trademark owner has one mark that is specifically affected by abusive registrations in one registry. NCTA submits that unless and until the PDDRP is revised so it can address the systematic abuse by a registrar, regardless of the identity of the trademark owner, the PDDRP will never be used. *NCTA (10 Dec. 2010).*

Standards

Willful blindness.

To be effective the PDDRP must include a willful blindness standard including corresponding reasonably designed safe harbors for intermediaries. Continuing failure to address this issue will leave a gaping hole in higher-level administrative enforcement within the DNS. *WIPO Center (2 Dec. 2010). MARQUES/ECTA (10 Dec. 2010). RE/MAX (10 Dec. 2010).*

The PDDRP should instill accountability among registration authorities by adopting a willful blindness standard of liability. *IOC (29 Nov. 2010). Hogan Lovells (9 Dec. 2010).*

NCTA supports a standard that would require that the registry have first been put on express notice of abusive registrations, but nevertheless turns a blind eye to them. NCTA continues to believe that excluding registrants from liability under the PDDRP for any domain name registrations by third parties unless it can be shown that they were actively encouraged by the registry will effectively eliminate any potential usefulness of the PDDRP. The requirement for some benefit by the registry other than registration fees will also effectively neutralize the PDDRP. Without the possibility that they will be held responsible for ignoring abusive registration of which they have notice, registries will be free to pocket these fees and continue to ignore the abuses taking place. *NCTA (10 Dec. 2010).*

By limiting the process to affirmative conduct, ICANN discourages best practices by its registries, including those who intentionally design their operations to engage in bad faith activities through passive mechanisms. By stating that even when the registry is on specific notice of trademark infringements they are not liable sends a message that ICANN will tolerate certain illicit activities by its registries if structured the right way. The definition of affirmative conduct should be broad enough to include both knowing and

intentional bad faith conduct on the part of registries and registrars whether “affirmative” or otherwise. *Verizon* (10 Dec. 2010).

Burden of proof/evidentiary standard.

The PDDRP contains unrealistically high burdens of proof at both the first and second level. *BC* (6 Dec. 2010). *Verizon* (10 Dec. 2010).

Many multiple procedural layers (e.g., reviews, appeals) and questionable design choices (e.g., evidentiary standards, blanket exemption of third party abusive second level names, three member panel option for registry, etc.) appear to accommodate primarily the interest of prospective respondents. This hollows out the value of the PDDRP instead of taking a progressive step toward self-regulation between bona fide stakeholders. *WIPO Center* (2 Dec. 2010). *CADNA* (10 Dec. 2010).

The PDDRP should have a lower burden of proof. *MarkMonitor* (Module 5, 7 Dec. 2010).

The standard should be preponderance of the evidence. *IACC* (9 Dec. 2010).

Section 6. The conditions for safe harbors are uncertain in scope and depend on “encouragement” and “inducement” which could be vague and could prohibit general promotion. “Encouragement must be specific to the alleged infringing registration. Accordingly, section 6 should be revised to state: “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 an intentional direct or indirect encouragement, inducement, initiation or direction specifically related to the challenged registration, of any person or entity affiliated with the registry operator....” *RySG* (7 Dec. 2010).

Impact of VI decision.

The Board’s elimination of vertical separation necessitates revision to the PDDRP to ensure that the definition of “registry operator” tracks the Section 2.9(c) language in the agreement to ensure that the conduct of a registrar vertically integrated with a registry operator is imputed to that registry operator for purposes of the Section 6 “Standards.” In addition the need for consideration and amendments to the process as a result of the VI decision is shown by, e.g., the utter lack of reference to registrars, which could now provide loopholes. *INTA* (8 Dec. 2010). *Microsoft* (9 Dec. 2010). *IPC* (9 Dec. 2010).

The impact of the Board’s dramatic reversal on cross ownership on the PDDRP needs to be explained and considered over a period of more than a few days. *Time Warner* (9 Dec. 2010).

Procedures

Costs and loser pays. It would be more equitable for each party to share the costs upfront while retaining the “loser pays” model once the decision is rendered. *INTA (8 Dec. 2010)*. *IPC (9 Dec. 2010)*.

Section 9.2.1. The language should be revised as follows: The Complainant is a holder of a word mark “(i) that is registered (not just applied for); and has been through the relevant period for opposition applied in the country of registration; and is not subject to a pending opposition, revocation or cancellation action; and is in use;” A new footnote should be added to accompany appearance of the phrase “in use”: “It will be sufficient for the rights owner to make a simple declaration of use.” This revision, requiring use of a trademark in order to enter the clearinghouse database, is designed to create qualification hurdles high enough to exclude cyber squatters without setting the hurdle so high that legitimate rights owners cannot qualify. *BC (6 Dec. 2010)*.

Threshold Review.

Threshold reviews should be conducted by a person independent of the PDDRP provider, not one chosen by the PDDRP provider. The Threshold Provider should be separate from both the PDDRP Provider and the Expert Panel to avoid even the appearance of automatic satisfaction of the Threshold Review Criteria and movement to the Expert Panel (and more fees for the PDDRP Provider). *RySG (7 Dec. 2010)*.

The threshold review panel seems to be superfluous. The panel’s purpose is to conduct an administrative compliance review, which already falls under the responsibilities of the PDDRP provider. *CADNA (10 Dec. 2010)*.

Remedies

Challenge of a Remedy (section 21). *RySG* suggests specific language to further clarify this issue. It believes that all parties agree that any challenge under this section will involve a de novo review. Suggested language for section 21.4: insert “which shall consider all issues de novo” in the third sentence after the words “arbitration dispute.” *RySG (7 Dec. 2010)*.

Availability of Court or Other Proceedings (section 22). This issue should be understood but it may be helpful to further clarify that the review rights are cumulative with the insertion of a second sentence to section 22.1: “All procedures for the review or challenge of any determination of liability or remedies in this PDDRP are cumulative and not intended to be to the exclusion of any other form of review or challenge provided herein.” *RySG (7 Dec. 2010)*.

The PDDRP should define remedies for common abuse. Remedies should contain specific bounds for penalties that provide disincentive for abuse. *MarkMonitor (Module 5, 7 Dec. 2010)*.

Even if a complainant wins there are no sanctions against a registry and no corresponding duty by ICANN to investigate or sanction the registry. *BC (6 Dec. 2010)*. *Verizon (10 Dec. 2010)*.

It defies common sense to prohibit deletion, transfer or suspension of second level registrations where they are the basis for the PDDRP claim. *Microsoft (9 Dec. 2010)*.

Limiting relief to owners of word marks is unjustified and unacceptable. *Microsoft (9 Dec. 2010)*.

Remedies must be clarified to exactly how suggested remedies may differ if the registrant is found to be under the ultimate control of the registry operator (section 18.1). The arbitration provisions of the registry agreement (21.4) must be clarified regarding whether ICANN can implement a remedy once the arbitration has concluded if the decision against the registry operator is upheld. *IPC (9 Dec. 2010)*.

Miscellaneous

Correction to section 8.2—amended complaint. The word “not” should appear before the word “receive” (missing word). *INTA (8 Dec. 2010)*. *Microsoft (9 Dec. 2010)*.

Section 7.2.3(h) should be removed –it is inconsistent with section 6.1 and unnecessary. *Microsoft (9 Dec. 2010)*.

Summary of Analysis

As noted in prior comment analysis, not all suggested revisions have or could have been included in the PDDRP as some were either not implementable or were directly at odds with each other, thereby requiring some balancing of interests. All comments have all been carefully considered in the development of the implementation details of the PDDRP, even if not implemented.

Some suggest that the PDDRP needs to be extended to registrars in order to be effective. As stated previously, while this may be something to consider in the future, such expansion is not at issue here and is not under consideration as part of the implementation of the new gTLD RPM.

In terms of the criteria for liability, discussion and comment continues on whether registries should be found liable under the PDDRP for willful blindness to malicious conduct, i.e., the fact that there are infringing names in its registry. Others have suggested that notice of and ignorance to infringing names in the registry should be the standard for finding liability. As set out in the latest version of the Trademark PDDRP proposal, and set forth in the last version of the PDDRP Comment Summary and Analysis:

[W]illful blindness is not and properly should not be included as part of the

standard under which the registries will be reviewed. The portion of the PDDRP that can hold a registry liable for infringement at the second level is a large step in providing trademark protections. It must be done carefully. Registries do not have a direct interface to customers; that happens at the registrar level. Registries maintain the database. In any large registry there will be a relatively large number of “infringers,” the registry may be aware of some of them but will also be unaware of others. To hold registries accountable for all instances of infringement would have unknown effects on the ability of the registry to conduct business. . . . In the meantime, it is reasonable to hold registries accountable for affirmative conduct with regard to second-level names. That is what this standard does; it hasn’t been done up to now; it is a substantial step.

<http://www.icann.org/en/topics/new-gtlds/pddrp-comment-summary-and-analysis-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf>

The registry should be liable for its affirmative conduct resulting in infringement of trademarks; the standards for the PDDRP are crafted to achieve that goal. Accordingly, while it is clear that some still think that the standard should include willful blindness, or some derivative of willful blindness, there is no plan to change the standard in the current version of the PDDRP. There are many other avenues to after registrants that are infringing trademarks, and those must not be forgotten through the development of a variety of RPMs.

Some suggest that the burden of proof and evidentiary standard are too high and that the PDDRP seems to favor the registry operators. The requirements for clear and convincing evidence and a bad faith requirement is what the IRT proposed. So long as the high bar set by the standards as currently written remain intact, the suggestion to lower the burden of proof to a preponderance of the evidence is something that might be considered. In fact, this has been a topic in recent community discussions and may be revisited in discussions with the GAC.

One group has suggested that unless encouragement, inducement, initiation or direction is “intentional”, no liability can be found. Given the breadth of the provisions providing defenses to registry operators, in balance with the rights of the potential complainants, the suggested changes do not seem appropriate. If encouragement, inducement initiation or direction is found, whether intentional or not, the complainant must still prove the liability of the registry operator. Thus, no revisions will be made to this defense.

While some suggest revisions to the requirements for what marks a complainant must have in order to file a PDDRP, the substantive suggested change seems to be the nature of what is sufficient to show use. While investigation of what Clearinghouse validation of use would require is still under review, consideration is being given to requiring a simple declaration from the trademark holder that the mark has been in use,

along with a sample showing that use in commerce (such as a label, advertisement, screen shot or the like).

Some suggest that the Board's decision on cross-ownership between registries and registrars changes the nature of the PDDRP and requires a broadening of its reach that should track section 2.9(c) of the draft base registry agreement. The language in section 6 of the PDDRP, was in fact taken from the draft base registry agreement and was simply adapted to fit the term registry operator, and not "affiliate." Accordingly, it is clear that the PDDRP will be equally effective in a registry-registrar co-ownership situation and other revisions need not to be made to the PDDRP because of the Board's decision on cross-ownership.

Some have suggested clarifying language that seems unnecessary to make at this time. Others have suggested the removal of certain adjectives from the standards such as "unjustifiably" impairing the distinctive character, creating "an impermissible" likelihood of confusion or, a "substantial" pattern or practice. Omitting "unjustifiably" and "impermissible" seems reasonable, as it does not substantively change the nature of the standards. Omitting "substantial," however, does seem to substantively change the standards. As noted above, if a lowering to the burden of proof is considered and adopted, lowering the standards should not be adopted. Further language revisions can be considered so long as they are non-substantive.

One commenter suggests that remedies should be defined for common abuse. It seems pre-mature to develop remedies for common occurrences of abuse when the PDDRP remains untested. To the extent a pattern of particular types of abuse emerges, developing specific remedies for specific forms of abuse can and should be revisited.

Others comment that even if the complainant wins, there are no sanctions against the registry operator and ICANN should issue sanctions. Further, there *is* a form of sanction always available. The Expert Determination will recommend, and ICANN will impose remedies deemed appropriate given the circumstances and the findings of the Experts. It is true that there are no monetary sanctions provided for the PDDRP. However, the range of possible remedies against the registry operators reaches up to and includes termination of the registry agreement. This breadth of possible remedies should provide much the same results as possible monetary sanctions, which are meant to punish bad actors.

One commentator has suggested that the PDDRP should provide for deletion, transfer or suspension of second level registrations where they are the basis for the PDDRP claim. It must be recognized that the registrant of the infringing name is generally not a party to the PDDRP. Seeking deletion, transfer or suspension is possible through other RPMs that provide for claims against the registrant (URS, UDRP, court action). The PDDRP is meant to reach the registry operator's conduct. Further, the PDDRP does provide for deletion, transfer or suspension to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator. This last clarification responds to the comment about how remedies can be

different if the registrant is under the control of the registry operator. Of course, all other remedies would also be applicable.

Some suggest that it would be more equitable for the parties to share costs up front, while retaining the “loser pays” provisions at the conclusion of the proceedings. This has been the subject of much discussion. Balancing this fee- shifting provision, with the fact that a registry operator will always be the respondent, rather than individual registrants as in other RPMs, as well as the fact that the registry agreement includes failure to comply with the PDDRP a breach of the registry agreement, it seems equitable to not require the registry to consistently front the full amount in the PDDRP.

One comment requests that the PDDRP provide protection for trademarks other than “word marks.” The issue regarding limiting relief to infringement of word marks only has been repeatedly discussed in response to comments to the PDDRP, the Clearinghouse and the URS. Using marks that are not just word marks to support protection in domain names, that are just words, will require discretion and subjectivity, and likely disparate treatment; the goal of the RPMs is to treat mark holders with equal consideration under equal circumstances. Further, including additional marks being afforded protection under the PDDRP that would require analysis and evaluation, will add another level of complexity to an already complex process.

In addition to substantive comments, some requests for clarification and some suggested edits in response to typographical errors will be made in the final version of the PDDRP. Thanks for catching those. Another suggested that section 7.2.3(h) is internally inconsistent with section 6.1 and not necessary. This suggestion has been considered, but not taken as these provisions do not appear inconsistent.

REGISTRY RESTRICTION DISPUTE RESOLUTION PROCEDURE (RRDRP)

Key Points

- The RRDRP was developed to allow an independent analysis as to whether a particular domain fails to comport with the limitations placed on the registrations of a community based TLD.
- The prospect of an expedited complaint procedure in advance of the RRDRP has been included in the RRDRP since the October 2009 version of the Applicant Guidebook.

Summary of Comments

RRDRP should be same as PDDRP.

RySG recommends that at least the requirement that a Registry Operator must pay to respond should be amended to be identical to the PDDRP. Section 9 of the RRDRP should mirror Section 10 of the PDDRP. *RySG (7 Dec. 2010)*.

There should be an Independent Threshold Review as in the PDDRP to limit meritless complaints. The wording of the Threshold Review as set out in the current PDDRP should be added into the RRDRP—with only minor changes for differences in the proceeding. A certification that the party has not already filed a similar action against the community TLD in another ICANN proceeding should be added. *PIR (Module 5, 15 Jan. 2011)*.

The protections against abuse in the RRDRP should be as strong as those in the PDDRP, including:

- Parties to the dispute must not be allowed to have two chances at the same case in two different proceedings (PDDRP and RRDRP).
- For standing and standards, as in the PDDRP, the RRDRP must have a high requirement for standing and standards. ICANN should raise the standards and set a clear and reasonable burden of proof on the complainant. Standing should not be allowed to provide ammunition for those who lost fights in their communities—including the fight to run the community TLD (seeking to show their “harm”) and/or the grudges and differences that run through almost all communities.
- The complaint requirements should be changed. At a minimum, the aggrieved party must show by clear and convincing evidence that:
 - (1) it has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports;
 - (2) the registry has failed in a substantial and consistent manner to serve the defined community (as the registry has defined it and as ICANN has accepted it in the registry agreement);
 - (3) the registry operator’s affirmative conduct has caused substantial harm to the complainant; and
 - (4) there is a pattern of bad conduct harmful to the complainant.

PIR (Module 5, 15 Jan. 2011).

Impact of VI decision. The Board’s elimination of vertical separation necessitates revision to the RRDRP to ensure that the definition of “registry operator” tracks the language in the agreement to ensure that the conduct of a registrar vertically integrated with a registry operator is imputed to that registry operator. In addition the need for consideration and amendments to the process as a result of the VI decision is shown by, e.g., the utter lack of reference to registrars, which could now provide loopholes. *INTA (8 Dec. 2010)*.

The RRDRP fails to curtail registries that are willfully blind to rampant cyber squatting in their namespace. *RE/MAX (10 Dec. 2010)*.

Expedited procedure.

The individual complaint proceeding in footnote 1, which has been proposed for the first time in DAGv5 without public discussion, should be deleted on the grounds that it has not been properly explained, justified or vetted with the Internet community. It would expose a community TLD to the risk of a series of challenges to individual second level domain name registrations, potentially opening the floodgates of harassment and abuse. *PIR (Module 5, 15 Jan. 2011)*.

Regarding footnote 1, INTA supports development of a process that may enable disputes to be resolved quickly and easily but does not believe that filing an “initial complaint” directly with the registry operator should be a required first step before initiating an RRDRP if the complainant prefers to initiate an RRDRP immediately. *INTA (8 Dec. 2010)*.

Costs

Similar to the PDDRP this section was dramatically amended to be nearly identical. This would be acceptable if the Registry Operator did not have to pay fees up front (i.e. response to complaint). If the Registry Operator has to pay fees to respond, contrary to RySG’s recommendation, then those fees should be returned to it if it wins: “13.4 If the Provider deems the Registry Operator to be the prevailing party, the Registry Operator shall be entitled to a refund of its filing fees.” *RySG (7 Dec. 2010)*.

It would be more equitable for each party to share the costs up-front while retaining the “loser pays” model once the decision is rendered. *INTA (8 Dec. 2010)*.

Challenge of a remedy (section 20). It may be helpful to clarify that this is reviewed de novo. *RySG (7 Dec. 2010)*.

Availability of Court or Other Proceedings (section 21). This issue should be understood but it may be helpful to further clarify that the review rights are cumulative. *RySG (7 Dec. 2010)*.

Shift in the burden of proof. The main problem with the RRDRP is that it shifts the burden of proof to the responding party. The RRDRP promotes a system that sees registry operators being asked to proceed to substantive evaluations relating to the substantive elements of the complaint. This places an unreasonable burden on registry operators that does not exist under any other dispute resolution mechanism, and ICANN has provided no justification for it. ICANN needs to explain the rationale of asking registry operators to conduct such an evaluation—i.e. what makes community based objections so inherently distinctive from all other objections that would warrant a shift in the burden of proof? In current practice compliance requirements are imposed on registrars, not registries. Asking registry operators to investigate the reported noncompliance enforces a culture that will eventually see registry operators proceeding to control content, which falls outside of their contractual remit. Registry operators are not content providers, they are party to domain name registration contracts between

registrars and registrants, and they lack the tools and possibly the legitimacy to proceed to such substantive evaluations. *K. Komaitis (Module 5, 14 Jan. 2011).*

Language limitation. The RRDRP should not be limited to the English language. Community gTLDs are perhaps among the few cases where language will be a major issue. Various communities around the world do not have English as their first language and they should be able to submit complaints in their own language. The RRDRP should allow parties to choose the language they feel more comfortable with. *K. Komaitis (Module 5, 14 Jan. 2011).*

Appellate panel—no rotation. The appellate panel should not rotate. A permanent panel of diverse international experts, perhaps not appointed by the provider but through an ICANN process and serving all providers, offers advantages of consistency and uniformity which are key to a successful dispute resolution mechanism. *K. Komaitis (Module 5, 14 Jan. 2011).*

Remove arbitration references. Any references to “arbitration” should be removed as this dilutes the purpose and validity of the RRDRP and will create various problems for both registry operators and the communities. Arbitral proceedings have a very unique and concrete nature and the RRDRP is inherently distinctive. *K. Komaitis (Module 5, 14 Jan. 2011).*

Remedies.

Registry operators should be required to monitor not only the domain names at issue in the RRDRP proceeding, but also registrations from the registrants involved. *INTA (8 Dec. 2010)*

If a complainant wins, only a refund of their fees is possible but neither monetary damages nor sanctions are possible. ICANN is also not required to take any steps to investigate or sanction a registry for compliance purposes. *Verizon (10 Dec. 2010).*

The remedies that could be imposed by a provider pose an extraordinary risk—e.g. suspension of accepting new domain name registrations in the gTLD, and termination of a registration agreement. ICANN should provide the community TLDs with special protections, but instead the RRDRP provides them with more threats and more exposure to serious risks. *PIR (Module 5, 15 Jan. 2011).*

Corrections.

In Section 8.2 the word “not” should appear before the word “receive” (missing word). *INTA (8 Dec. 2010) IPC (9 Dec. 2010).*

The word “shall” seems to be missing from section 13.2 (“The Provider shall appoint...”). *IPC (9 Dec. 2010).*

Analysis of Comments

As noted in prior comment analysis, not all suggested revisions have or could have been included in the RRDRP as some were either not implementable or were directly at odds with each other, thereby requiring some balancing of interests. All comments have been carefully considered in the development of the implementation details of the RRDRP, even those not adopted.

Many of the comments above suggest that the RRDRP should match the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP). There are, however, significant differences. Particularly, one party suggests that a registry should only be liable under the RRDRP if it “has failed in a substantial and consistent manner to serve the defined community” and has conducted itself with a “pattern of bad conduct harmful to the complainant.” Similar requirements were imposed on registry operators in the PDDRP so as to ensure that the registry operator would be liable for its own conduct, and not conduct of others, such as registrants. Here, even if the registry operator has just one name in the registry that does not comport with the registry restrictions, then it is and should be liable for that conduct, as it is the registry that is required under its contract to ensure the restrictions are satisfied. This is the same reason why the burden of proof is written the way it is, and will not be changed.

Thus, the PDDRP by its nature involves a third party, the registrant (unless the registrant is the registry). The RRDRP, on the other hand, was developed to allow an independent analysis as to whether a particular domain fails to comport with the limitations placed on the registrations of a community based TLD, and thus a possible breach of the ICANN agreement. This independent analysis will help ensure that ICANN does not become involved in analyzing content on the Internet, which is outside of ICANN’s mission.

Relieving the requirement that registry operators pay a response filing fee is not as compelling as it is with respect to the PDDRP. Further, the mandatory advance expedited review before an RRDRP can be filed, which is similar to an online Whois Data Problem Report System (WDPRS) complaint (see below for more details), provides the registry operator with sufficient notice of the complained of activity such that a threshold review would add an unnecessary level of complexity. (The WDPRS provides an online tool for people to complain if they think that Whois data for a particular registration is inaccurate or incomplete. Those complaints are automatically transmitted to the registrar for investigation.)

In response to comments suggesting that the RRDRP track the registry agreement as to the definition of the registry operator, as noted above, with the RRDRP, it is the actual registry operators’ conduct that is at issue because it is the registry, not any other party, that is bound to follow the terms of the registry agreement and the limitations on registrations allowed in the registry.

Some suggest that the RRDRP needs to be extended to registrars in order to be effective. As stated previously, while this may be something to consider in the future, such expansion is not at issue here and is not under consideration as part of the

implementation of this RPM.

With respect to the proposal that an expedited procedure similar to the WDPRS be employed, while some suggest that it not be a pre-requisite, others suggest that the Proposed Final Version of the Applicant Guidebook is the first time such a mechanism has been proposed. To correct the record, while this is the first comment on this topic, the prospect of an expedited complaint procedure in advance of the RRDRP has been included in the RRDRP since the October 2009 version of the Applicant Guidebook:

Initial complaints by those claiming to be harmed by the non-compliance of community restricted TLDs might be processed through an online form similar to the Whois Data Problem Report System at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator would receive a copy of the complaint and would be required to take reasonable steps to investigate (and remedy if warranted) the reported noncompliance. Implementation of such an online complaint process is under investigation and consideration.

See <http://icann.org/en/topics/new-gtlds/draft-rrdrp-04oct09-en.pdf>; see also <http://icann.org/en/topics/new-gtlds/draft-rrdrp-clean-15feb10-en.pdf>; <http://icann.org/en/topics/new-gtlds/rrdrp-clean-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/rrdrp-clean-12nov10-en.pdf>.

Given the differences between the RRDRP and the PDDRP, it is appropriate to continue to require the registry operator to pay a response filing fee, which is meant to cover administrative costs.

Comments relating to adding clarity will be adopted. Further, while the first round of all processes are meant to be conducted in English, this will be addressed and revisions considered as the New gTLD Program progresses throughout various rounds. Note that UDRP proceedings occur in English.

It would be extremely difficult to maintain one appellate panel that would be equipped to review decisions on all RRDRP proceedings, as one commenter suggests. There will be a large range of communities that may require a large range of expertise to resolve disputes. Reviewing determinations in those proceedings will also be widely varied. Thus, to have panels appointed as appeals are filed seems the most reasonable approach.

One commenter calls for removal of the term arbitration because the RRDRP is distinctive from arbitration. The reference to arbitration, however, is not as it relates to the RRDRP, but if someone files arbitration pursuant to the registry agreement challenging the imposition of a remedy. Thus the reference to arbitration is appropriate, as it is not meant to apply to the RRDRP.

While there have been some comments about amending remedies, note that the remedies, which are only recommendations from the panel, do cover a broad range of options. Further, the comment that ICANN is not required to take any steps to investigate or sanction a registry for compliance purposes is misplaced. Contractual compliance will continue to remain an obligation of ICANN, notwithstanding any dispute resolution proceeding that may be filed by a third party.

In terms of comment about changes or corrections to language will be considered and made as appropriate.

Objection Procedures

Key Points

- While still under consideration, the Board has expressed some interest in allowing the GAC (and the ALAC) as a whole to file objections with funding support from ICANN.
- The Applicant Guidebook will be revised to make clear that the IO shall not take action unless at least one comment in opposition is made in the public sphere.
- Neither the expert panel, in rendering its determination, nor ICANN, in approving or disapproving an application for a new gTLD, makes a decision that is final and binding upon a sovereign state.
- The ultimate goal of the community-objection process is prevent the misappropriation of a community label by delegation of a TLD and to ensure that an objector cannot keep an applicant with a legitimate interest in the TLD from succeeding.

Procedures

Summary of Comments

Choice of law. The lack of an explicit choice of law provision for the “objections” allowed under the new gTLD policy (dispute resolution procedures Art 2(e) 9ii)-(iii)) raises concern. Based on a forthcoming study, lack of a specific choice of law provision in the UDRP has caused inconsistent application and the skewing of results in favor of respondents with certain nationalities. Dispute resolution procedures Art. 2 (e) (i) and (iv) also raise concern because they provide rights to people without any legal basis for doing so, and have the potential to restrict speech on the Internet without sufficient justification. *D. Simon (Module 3, 11 Jan. 2011).*

Waive Government Objection Fees. It is not practical to ask governments to pay for objection fees. In cases of government objections that are not a proxy for a business or

social interest, the objection fees should be waived. ICANN can revisit this policy if there are abuses of it. *Demand Media (8 Dec. 2010)*.

Reduced fees for not-for-profits/NGOs. The ICANN Board should require its selected dispute resolution providers to provide reduced fees for not-for-profit organizations/NGOs for all steps of the new gTLD dispute resolution procedures that incur fees (e.g., sections 3.2.2, 3.2.4, 3.3.7, Article 14 and associated adjudication fees). *P-NPOC (1 Dec. 2010)*. *Red Cross (9 Dec. 2010)*.

Proposed Externalities Objection Process. External costs of each new gTLD individually can be reduced to a negligible amount if an Externalities Objection Process is added to the new gTLD program. The Externality Objection would stop a given gTLD if a panel rules that the gTLD causes unacceptable external costs. The burden of proof must rest on the objector. External costs are unacceptable if aggregate user benefits of the proposed TLD are clearly lower than the aggregate external costs. They are also unacceptable when the aggregate external cost is higher than the burden the gTLD operator would have to avoid them. The mere possibility of making the objection brings enough incentives for gTLD applicants to remain on the safe side. The application of course has to be held to account after delegation. This is one more reason why the PDDRP should apply to all TLDs and not just community-based TLDs. *W. Staub (10 Dec. 2010)*.

Posting of objections—timing and central repository (3.2.1). RySG recommends that ICANN publish filed objections within 5 calendar days of the filing of an objection. RySG recommends that there be one central repository (i.e. ICANN) for all objections and comments. *RySG (7 Dec. 2010)*.

Dispute resolution principles (3.4). Clarity should be provided on what is the burden of proof for the objector. *RySG (7 Dec. 2010)*.

Legal Rights Objection –trademark rights (3.4.2). Clarity should be provided on how much weight will be given to different types of trademark rights (e.g. registrations, pending applications, common law, foreign, arbitrary and descriptive trademarks). *RySG (7 Dec. 2010)*.

Independent objector.

Description of the methodology ICANN will use to solicit interest from IOs should be added, as well as specific decision criteria regarding the selection and supervision of the IO. *BC (6 Dec. 2010)*.

ICANN needs to get a third party or a portion of the ICANN community involved in the selection of an IO, or needs to be much more transparent about the process and perhaps offer a way for the ICANN community to object to ensure that the IO is actually independent and will not simply carry out ICANN's agenda. *CADNA (10 Dec. 2010)*.

Critical safeguards for the public interest have either been removed or have been left out. Instead of a way to prevent applicants and objectors from outspending their opponents, the IO has been re-architected to as a tool to allow the introduction of anonymous, unaccountable, opaque objections. ALAC now believes that the IO role should be eliminated. If the IO is eliminated significant costs savings can and should be achieved. The potential for the IO's misuse has been made clear and any benefit it would have would be outweighed by its invitation for gaming and bullying. The accessibility issues that the IO was designed to address can be fulfilled if the CWG recommendations are implemented. If the ICANN Board and staff insist, against the public good, on implementing the IO, they must at least implement all necessary safeguards to prevent the dangers inherent in the current design. *ALAC (8 Dec. 2010). P-NPOC (9 Dec. 2010).*

There is no accountability requirement that an objection brought by an IO be tied to at least one specific party who claims that it will be harmed if the TLD goes forward. Transparency is missing; a proposal for secret objections by governments and others cannot stand. If there must be an IO, actual objectors must come forward and be transparent about their role to prevent the new TLD. "Risk mitigation" is not a legitimate policy objective for ICANN (i.e. use IO as a forum to quietly kill controversial TLDs to ward off ICANN's ability to be sued in courts of law). The global public interest regarding the DNS is ICANN's primary obligation, not its own corporate interest. The IO also lacks true independence, as the IO is employed by ICANN and the third party contracted to select the experts who will determine the objection is also hired by ICANN. The expert panel will lack neutrality since it will have an incentive to agree with the IO (ICANN) who hired it. *NCUC (10 Dec. 2010).*

The IO proposal seems to allow objections to be made on an anonymous and unaccountable basis. *DCFE (10 Dec. 2010).*

ICANN Board Role.

It is understood that ICANN may need to outsource objection and evaluation tasks during the new gTLD application process. But a decision to outsource services does not enable ICANN to escape accountability for decisions made by outsourcing vendors. ICANN's Board must be the final resolution body for disputes that arise during evaluation and objection processes. The challenges of managing both internal and external outsourced objection processes underlie the BC's recommendation for an initial batch of fewer than 500 applications. *BC (6 Dec. 2010).*

The decision to censor a TLD should not be outsourced but should be made by the ICANN Board directly. *DCFE (10 Dec. 2010).*

Response fees paid by applicants (3.2.4). Section 3.2.4 should be deleted. If an application is contested, it ought not to trigger a second fee just so that the applicant can defend the rationale already included in their original application. This is made more appropriate inasmuch as ICANN notes in the guidebook that some objections may be frivolous. *BC (6 Dec. 2010).*

Protection of IGOs.

The WIPO Center notes positively that the Guidebook now foresees a degree of protection at the top level for IGOs. Regarding second level registrations, ICANN's clarification on envisaged protection would be welcome. The 2007 ICANN Staff Report on Draft IGO Domain Name DRP provides a basis for addressing disputes concerning the registration or use of a domain name in a manner that would e.g. be a misleading use that falsely suggests a connection with the relevant IGO, or that would violate a treaty. *WIPO Center (2 Dec. 2010).*

Hogan Lovells is pleased with the specific provisions for the protection of names and acronyms of IGOs within the scope of Legal Rights Objections. *Hogan Lovells (9 Dec. 2010).*

Analysis of Comments

One comment expressed a concern about the lack of an explicit choice of law provision for the objection and dispute resolution procedure. In the cases of these objections, the rules are based on the standards and not the law of an individual jurisdiction. Through the development of the program and extensive public comment the process itself defines the standards that panels will apply in an objection proceeding. These standards are set out in the Applicant Guidebook (§ 3.4), to which Articles 2(e) and 20 of the New gTLD Dispute Resolution Procedure (the "Procedure") refer. The Limited Public Interest Objection, Applicant Guidebook § 3.4.3, refers specifically to international law and to certain treaties and other international instruments. Note also Article 4(d) of the Procedure, which stipulates that the place of objection proceedings, which may have legal relevance, shall be the location of the DRSP that is administering the proceedings.

Some suggest, including the GAC, that fees for the objection processes should be waived for governments. This will be a topic of discussion during the GAC/Board consultation in Brussels and ICANN's March meeting. The cross-community working group that was formed to discuss issues relating to Recommendation 6 (Rec6 CWG) of the GNSO's New gTLD Policy Recommendations discussed something similar – whether the GAC itself should have to pay fees if it, as a group, files objections. While the Board has expressed a preference towards allowing the GAC (and the ALAC) as a whole to file objections with some nature of funding from ICANN, no decisions have been formally made. More information on this topic will likely be developed throughout the meetings between the Board and the GAC.

Reducing objection fees for NGOs or "not for profit" organizations, as two commenters have suggested, cannot be accommodated. What constitutes an NGO or "not for profit" organization will have varying definitions. Making a determination of which organizations would be entitled to reduced fees would add a level of subjectivity, and likely disparate treatment that all stakeholders are trying to eliminate to the extent

possible. In any event, fees are paid directly to dispute resolution providers, not to ICANN. Fees are at negotiated rates, so there is no room for discounts.

The development of an “Externalities Objection”, based upon the allegation that aggregate user benefits are lower than aggregate external costs has been suggested. Analysis indicates that this new form of objection would lead to dispute resolution proceedings that are costly and time-consuming, with unpredictable outcomes (i.e., high cost, questionable benefit). The four existing categories of objection address external costs (such as legal rights and community). Other mechanisms have been inserted into the program, which mitigate external costs. At this time, it does not appear necessary or appropriate to add a general objection to the process, although this may be a topic of discussion with the GAC and the Board in Brussels.

One group has suggested that ICANN publish objections within five calendar days after the filing of an objection. It should be noted that objections are not filed with ICANN so there could be a short delay in notification. Further, each of the dispute resolution providers will be publishing relevant information relating to objections on an ongoing basis (see Procedures, Article 9(e) at <http://www.icann.org/en/topics/new-gtlds/draft-new-gtld-drp-clean-12nov10-en.pdf>). There will be consideration of having ICANN’s website point to those various postings.

In terms of how much weight should be given to various types trademarks, it will be within the discretion of the panel to determine. First, the panel must determine if there is a right in a particular trademark that serves the basis of the complaint. Then the panel must determine, pursuant to the standards delineated, if that mark is infringed. The panel will then make its determination based on its finding. It will not be based on the strength of the registration, use, or otherwise, in a vacuum.

Some comment on the selection and qualifications of the Independent Objector (IO). Section 3.1.5 of the Applicant Guidebook describes the qualifications of the IO and how he/she will be selected. The Explanatory Memorandum, published on 18 February 2009 provides further information. (See <http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf>.) More detailed information and guidelines regarding the selection of the IO will be provided in due course. The proposal and selection process will be as transparent as feasible.

Some challenge the independence of the IO and one group has suggested that the IO be eliminated. ICANN does not agree with comments that suggest the Independent Objector process is “ripe for abuse” or that “critical safeguards” are lacking. The IO may receive comments and suggestions from the public, but – with a mandate to act in the best interests of the public who use the Internet – he/she will then decide independently whether to file an objection and how to pursue any objection that is filed. As ICANN explained in its response to the report of the Rec6 CWG (<http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf>), the IO is accountable before the expert panel. In the unlikely event that the IO submits a Limited Public Interest Objection that is manifestly unfounded or

an abuse of the right to object, the objection will be dismissed in the “Quick Look” procedure. An objection filed by the IO that passes the “Quick Look” test is still subject to the same scrutiny by the experts as any other objection. So the IO would not have a privileged position, wielding unchecked power.

The concern over the IO’s independence is addressed by process details and safeguards. The mere fact that ICANN pays the IO does not make the IO beholden to ICANN. All safeguards are put in place, similar to those for the ICANN Ombudsman, so that the IO makes his or her own decisions and proceeds in the public interest, not in the interests of ICANN.

The Rec6 CWG, and comments herein, express concern over the IO filing an objection without any publicly stated opposition to an application. In consideration of these comments, the Applicant Guidebook will be revised to make clear that the IO shall not take action unless at least one comment in opposition is made in the public sphere.

One comment referred to ICANN’s Board as the “final resolution body”. Indeed, while relying upon the determinations of experts regarding issues raised in objections, the Board retains ultimate responsibility for the New gTLD Program.

Comments about the fees that must be paid for filing and responding to objections, as well as the time periods and deadlines in the process have been submitted. ICANN has analyzed and responded to these comments in previous rounds. It may be helpful simply to reiterate here that the system of advance payment of costs is structured so that the prevailing party is reimbursed for its advance payment. See Procedure, Art. 14(e).

In terms of IGOs, as commenters have noted, ICANN has added protections for them in the protection of rights objection and dispute resolution process.

Limited Public Interest Objection (Morality & Public Order (M&PO))

Summary of Comments

Support for Guidebook approach. The Guidebook treats the M&PO issue in an appropriate and balanced manner. The reality is that there will be few, if any, applications that raise morality, public order or cultural sensitivity. Too much planning and investment goes into a gTLD application and corresponding business operations for an applicant to risk getting mired in a dispute over these types of concerns. We cannot plan for every scenario where one or two countries may be sensitive to a particular thing. If problems arise after launch the rules and procedures can be revised going forward. *Demand Media (8 Dec. 2010).*

Opposition to DRSP process.

ICANN has ignored the community consensus (the Cross-Community Working Group (CWG) approach which changes the fundamental nature of string evaluation from a

subjective comparison of morality to an objective analysis of objections against international law). The fundamentally inappropriate DRSP concept remains essentially untouched in the proposed final Guidebook. ALAC has substantial concerns that the CWG details have been inadequately and insufficiently presented to the ICANN Board and that as a result the CWG recommendations have not received appropriate consideration. *ALAC (8 Dec. 2010). P-NPOC (9 Dec. 2010).*

The Board should adopt the final recommendations of the Rec6 CWG in response to the GAC concerns about morality and public order objections. This working group superbly modeled the consensus building that makes ICANN successful. *E. Pruis (6 Jan. 2011).*

DRSP Provider.

The areas addressed by this objection go beyond the scope and expertise of the International Chamber of Commerce. Due to the significant importance regarding the public interest and community, more representative and more neutral authorities should be introduced to take on the duty of the DRSP. *Internet Society of China (10 Dec. 2010).*

If there is a DRSP, it is inappropriate for the ICC to serve as the authority selecting experts for disputes involving basic human rights such as freedom of expression. *DCFE (10 Dec. 2010).*

Applicable Law. Compliance with the limited public interest objection principles should be determined according to both the principles of international law and the laws of each sovereign state. If the objection is judged only by principles of international law, it is very likely to result in approval of some gTLDs which conflict with laws of some countries, which is obviously unfair to such countries. *Internet Society of China (10 Dec. 2010).*

Clarification needed. The section on limited public interest objection refers to generally accepted legal norms; “generally accepted” needs to be clarified. *CADNA (10 Dec. 2010). BC (6 Dec. 2010).*

Standards.

Given a well-recognized international right to freedom of expression, the criteria used to suppress TLDs must be very narrowly circumscribed and the authority used sparingly. Only those TLDs that clearly violate well-established international laws should be blocked under section 3.4.3. The current version of the Guidebook does not sufficiently respect legitimate free expression rights. ICANN’s Board and staff should make appropriate modifications in the final Guidebook. The burden of proof should always be on objectors to prove that a proposed TLD is illegal; the default should be to allow diverse and even controversial forms of expression. *DCFE (10 Dec. 2010).*

The possibility that a manifestly unfound limited public interest objection may be considered an abuse of the right to object may make trademark owners less inclined to object, allowing more bad actors into the pool. *CADNA (10 Dec. 2010).*

Objection Title. The title of the section should be changed to “objections based on general principles of international law.” The term public interest is too broad and ill-defined and lacks any firm basis in international law. The term “morality and public order” should also be stricken from the text (e.g. on page 3-18). *DCFE (10 Dec. 2010).*

Standing. Open-ended guidelines for who may file a Limited Public Interest objection may create a perpetual loop of opposition. A more specific regime is recommended. *BC (6 Dec. 2010).*

Analysis of Comments

The Limited Public Interest Objection is based upon generally accepted legal norms relating to morality and public order that are recognized under principles of international law. The specific standards that have been adopted for this objection reflect generally accepted legal norms, as explained in the memorandum that ICANN published on 30 May 2009. (See “Standards for Morality and Public Order Research” at <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>). It has been suggested that gTLD strings must also comply with the laws of each sovereign state. However, such a rule would, in effect, grant to each state a veto over the global Internet, which is unacceptable. An individual state may limit free expression in a way that cannot be qualified as a generally accepted legal norm relating to morality and public order that is recognized under principles of international law. It may be noted in this context, however, that states retain sovereign rights; the new gTLD dispute resolution procedure does not infringe their sovereignty in any way. Neither the expert panel, in rendering its determination, nor ICANN, in approving or disapproving an application for a new gTLD, makes a decision that is final and binding upon a sovereign state.

In response to the request for clarification of the term “generally accepted”, please read the explanatory memorandum, “Standards for Morality and Public Order Research”, dated 30 May 2009. It would not be feasible to provide a specific definition of “substantial opposition”, as this factor depends upon the circumstances of individual cases.

Some suggest that trademark owners will be less inclined to file a Limited Public Interest Objection because if the objection is found to be abusive, they may lose their right to file an Infringement of Rights objection later. First, no actor should file manifestly unfounded objections. Second, a finding of abuse regarding Limited Public Interest Objections will not count against the ability to file Infringement of Rights objections.

One comment asserted that the current version of the Guidebook does not sufficiently respect legitimate free expression rights. However, that comment gave no details or examples. The standards for Limited Public Interest Objections are set out in Guidebook section 3.4.3, and the procedure for considering such objections is stipulated by the New gTLD Dispute Resolution Procedure. It has not been shown how these standards

and procedures fail to respect legitimate free expression rights. Regarding the objector's burden of proof, see Procedure Article 20(c).

As explained during previous rounds of comments, ICANN considers the ICC's International Centre for Expertise to be well qualified to select eminent jurists of international reputation to serve as experts on panels considering Limited Public Interest Objections. Comments regarding the Independent Objector and the respective roles of the expert panel and the ICANN Board are addressed elsewhere in this analysis.

Contrary to some comments made – ICANN did not ignore the work of the Re6 CWG. Further, concerns that details of the Rec6 CWG's report were insufficiently presented to the ICANN Board are unfounded, as the published materials amply demonstrate. (See, e.g., <http://www.icann.org/en/topics/new-gtlds/explanatory-memo-morality-public-order-12nov10-en.pdf>.) The fact that ICANN did not accept all of the Rec6 CWG's recommendations should not be interpreted to mean that those recommendations were ignored or given short shrift. Where ICANN did not accept a recommendation, it provided an explanation. In particular, ICANN does not consider that the fundamental nature of string evaluation under the existing objection procedure for Limited Public Interest Objections could reasonably be described as a "subjective comparison of morality". There are very specific and concrete standards for assessing applied-for strings in the event of a Limited Public Interest Objection. (See Guidebook section 3.4.3.) Who may file an objection on these grounds is also laid out the Guidebook.

Notwithstanding the positions stated in the current version of the Guidebook, as has been noted above, some further changes are anticipated in light of the fruitful discussions between ICANN and the Rec6 CWG in Cartagena and subsequent clarifications. Further, as the community is well aware, this particular area of the new gTLD Program is a subject of the GAC-Board discussion. The GAC and the ICANN Board will be discussing their views about the objection process during its meetings in Brussels, as well as during the March ICANN meeting. These discussions may also include a discussion about the title of this objection.

Community Objections

Summary of Comments

Expand grounds for Community objections. In many cases it is not possible for the objector to supply evidence in material terms against an applied-for gTLD representing or related to a community. For instance, the string "Hongkonger" is not a geographic name protected by the Guidebook yet representing Hong Kong people as a clearly and distinctly defined community. If a non-Hong Kong-based organization applies for the string "Hongkonger", it would be difficult for the community of Hong Kong people to file an objection during the process, as the potential and possible detriment to the interests of Hong Kong people could not be deduced a priori in economic or reputational terms. The same goes for more generic terms like "Honkie" (a common nickname for Hong

Kong people) and “Kiwi” (a common name for New Zealanders). Communities are institutionally disadvantaged in the process of dispute resolution for new gTLDs. HKIRC recommends that community objections with reasonable ground, not limited to those stipulated by subsection 3.4.4 of the guidebook, should also be formally considered by a panel of experts. *HKIRC (22 Dec. 2010)*.

Substantial Opposition. The language is too vague in the requirement that the objector has to prove substantial opposition in the community that the objector is representing. “Substantial opposition” also needs more specific definition. *CADNA (10 Dec. 2010)*. *BC (6 Dec. 2010)*.

Support for elimination of complete defense. BITS is pleased with this change as the provision unintentionally foreclosed a community’s ability to object to an applicant perceived as unsuitable. *BITS (9 Dec. 2010)*.

Detriment.

Without explanation some radical changes have been sprinkled into various important aspects of the proposed final Guidebook, which could have a serious detrimental impact on the public. For example, the proposed final Guidebook has suddenly and without explanation raised the bar for community objections so dramatically that it is doubtful that anyone could possibly win such a proceeding. There has been a radical shift in section 3.4.4. to requiring not only that the objector prove that the community that it represents is likely to suffer a “material detriment” if the objected-to application is approved (the word “material” is newly added and undefined) but also that “material detriment” is likely to be inflicted on the “broader Internet community” (this term is also undefined). ICANN staff seems to have unilaterally and without explanation chosen to eviscerate the community objection process, which hardly advances ICANN’s fulfillment of its public interest obligation. *COA (3 Dec. 2010)*.

The “material detriment” standard should revert back to the prior standard and the requirement to show “material detriment” to the broader Internet community should be removed. *RIAA et al. (11 Jan. 2011)*.

Analysis of Comments

One commenter has suggested, in essence, that the criteria for raising a community-based objection are too narrow because a potential objector may not be able to provide evidence. If evidence is not available, then it seems appropriate that the applicant should not be required to defend against an objection. A community objector must show that: “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.” (See Guidebook, Section 3.1.1 at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>.) If there is a true community and substantial opposition can be shown then an objection is valid. Otherwise it is not. Evidence is appropriately required in all types of objection proceedings. Absent evidence, no objection should stand.

One commenter seeks clarification on the term “substantial opposition.” As a determination of this will result from a balancing of a variety of factors, a specific definition is difficult. However, the factors are laid out quite specifically in the Guidebook at section 3.4.4 (see <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>).

Some have commented on the heightened level of detriment required to prevail in an objection proceeding, while another group has expressed support for the elimination of the complete defense. These two revisions were tied together. The ultimate goal of the community-objection process is prevent the misappropriation of a community label by delegation of a TLD and to ensure that an objector cannot keep an applicant with a legitimate interest in the TLD from succeeding.

Previously, with the complete defense in place, if a community could satisfy the criteria it would otherwise need to prevail on an objection, that applicant would always prevail in an objection proceeding. It was pointed out that this could lead unintended consequences.

Example with the complete defense in place: an actual community of corrupt widget makers known for selling defective widgets applies for a community-based string, and the community of the legitimate widget makers who sell non-defective widgets objects. The corrupt widget makers could successfully lodge a complete defense, blocking the legitimate objection. This would have been the wrong result. Thus, the complete defense has been deleted from the new gTLD process.

Example, with the deletion of the complete defense: legitimate widget makers apply for a TLD and corrupt widget makers object. The objection can show simple detriment to the corrupt widget making community and block the legitimate string. This is also an unwanted consequence that must be avoided. One way to avoid this consequence was to require proof of detriment to more than just the objecting community.

ICANN is still open to alternative suggestions, but reverting back to simple detriment to the objector alone is not acceptable. Some additional detriment is required in order to block a string. We look forward to further discussion on this topic to help us arrive at a workable solution.

MALICIOUS CONDUCT

Key Points

- Public comment will inform the evaluators in their evaluation process. Security measures should be commensurate with the type of TLD.

- The suggestion that rapid takedown measures be put into effect requires community discussion outside the new gTLD process as it involves new policy considerations.
- The High Security Zone working group will issue its final report in March. Certain aspects of the HSTLD control framework may be made applicable to all TLDs.

Summary of Comments

The malicious conduct measures remain insufficient. ICANN should develop new mechanisms and improve upon existing provisions in the proposed final AG to minimize the ability of malicious actors to exploit the DNS for illicit purposes and financial gain. ICANN should require in the AG that information about the protections against malicious conduct proposed by the new gTLD applicant is explained in enough detail in the application process so the community can comment on these measures. *IPC (9 Dec. 2010).*

Security measures appropriate for the applied-for gTLD string—evaluation criterion 35. There is some evidence of responsiveness in the proposed final AG to the numerous complaints that the issue of preventing malicious conduct had not been adequately addressed. For example, while COA is disappointed that the more effective options it proposed were rejected, revised criterion 35 could if correctly implemented provide at least some additional assurance that ICANN appreciates its public interest obligation in this area. It is important that ICANN clarify that the reference to “financial services oriented TLDs” in this criterion is just an example and that the requirement for enhanced protections “commensurate with the nature of the applied-for gTLD string” would also operate in other areas--e.g., health care-related TLDs, TLDs directed to children, and all TLDs that present an unusually high risk of being the venue for criminal, fraudulent or illegal conduct, including but not limited to copyright piracy. *COA (3 Dec. 2010). IPC (9 Dec. 2010).*

It is a problem that answers to question 35 are not made public, so public assistance to evaluators in applying this criterion could not be fulfilled. This problem can be solved in one of two ways. First, question 35 responses could be made public (subject to appropriate redactions as necessary to protect sensitive security information); or second and perhaps more simply criterion 28 could be modified to require applicants to present “comprehensive abuse policies and procedures that effectively minimize potential for abuse in the TLD, *taking into account the nature of the applied-for gTLD string and the intended uses of registered domain names in the gTLD.*” If the concept of a commensurate level of security now featured in criterion 35 were also adopted as a criterion for “commensurate level of abuse prevention and mitigation,” under question 28, the public could provide the needed assistance to evaluators, because all responses to question 28 are made public. *COA (14 Jan. 2011).*

COA supports (1) providing for some sort of formal objection procedure that could be instituted against applications that, in the view of the objector, fail to meet this “protection commensurate with the nature of the string” criterion; and (2) for clarifying

that not only financial services-oriented TLDs, but also others that present an unusually high risk of being the venue for criminal, fraudulent or illegal conduct, could be required by the evaluators to meet “new independent standards for demonstration of effective security controls” or of effective abuse prevention or mitigation, as the case may be. *COA (14 Jan. 2011)*.

Rapid takedown or suspension systems. ICANN should require registry operators to adopt and implement rapid takedown or suspension systems to combat malicious conduct, one of the most widely discussed mechanisms for combating the expansion of malicious conduct which is expected as new gTLDs are introduced. *Microsoft (9 Dec. 2010)*.

The recommendations in the proposed final AG will be extraordinarily helpful in combating malicious conduct and this issue should be considered resolved. *Domain Dimensions (9 Dec. 2010)*.

Best practices. Given the history of online music infringement, RIAA et al. is concerned that a music themed gTLD will be used to enable wide scale copyright and trademark infringement. RIAA et al. would like to work with ICANN and others to ensure that best practices are developed and used to ensure this type of malicious behavior does not occur. *RIAA et al. (11 Jan. 2011)*.

High Security Zones. ICANN should have proceeded with a High Security Zones Verification Program and made it mandatory for applicants. *Microsoft (9 Dec. 2010)*.

Analysis of Comments

Some community members remain concerned about the potential for malicious conduct in new gTLDs and have expressed that more work, including proceeding with the HSTLD program and making it mandatory, needs to be done. ICANN has worked closely with the community on a number of initiatives intended to mitigate malicious conduct in new gTLDs. On 12 November 2010, an updated explanatory memorandum on mitigating malicious conduct was published that details progress on the nine initiatives identified in a 3 October 2009 explanatory memorandum on this topic.

Regarding comments that have been made about the criteria for questions 28 (Abuse Prevention and Mitigation) and 35 (Security Policy), ICANN is consulting with internal and external experts around how both questions might be modified in a way that could provide the community with a greater sense of confidence that applicants have adequately detailed their security and abuse prevention and mitigation policies “commensurate with the nature of the applied for TLD string and taking into account the intended uses of registered domain names in the gTLD.” Modifications are being made for the next version of the Applicant Guidebook, including additional consideration of information in applicant answers that will be made public.

The revisions of the Guidebook also seek to clarify the line between types of information that should be made public and that which should not be divulged for security reasons.

The community's interest in having an opportunity to participate in the evaluation of the security and abuse prevention mechanisms in an application is understandable. Operation of a TLD is a significant undertaking, and security measures planned should be well understood so that users and registrants know how to deal with the new TLD. Also, valuable insight might be passed to the evaluators through public comment.

It must also be noted, however, that evaluators will be competent in the fields of security measures and other aspects of TLD operations. The evaluation process itself must be able to and is designed to stand on its own so far as adequately vetting applications for these and other aspects of the criteria. Nonetheless, it is important that the applications be open to the greatest extent possible, to provide the community notice as to the types and models of TLDs seeking delegation.

At this time ICANN does not intend to introduce an objection process in the area of potential for malicious conduct. In order for such a process to be considered, clear, objective criteria must be devised. No public comment to date has suggested such criteria. Neither has discussion among the implementation team and the community resulted in a viable objection mechanism. Evaluators will be asked to ensure that security measures are commensurate with security needs. Additionally, public comments will be used to inform evaluation panels as part of their application analysis.

With regard to the HSTLD program, work by that Advisory Group continues and they anticipate publishing their final report in March 2011. The final report will include an overview of the group's work during the last year, including input received in response to the RFI issued on 22 September 2010, and how it got to the position that a potential program should be voluntary. The HSTLD recommendations will take into account the ICANN Board resolution from 25 September 2010 that, "ICANN will not be certifying or enforcing the HSTLD concept; ICANN is supporting the development of a reference standard for industry that others may choose to use as a certification standard of their own. ICANN will not endorse or govern the program, and does not wish to be liable for issues arising from the use or non-use of the standard."

Two comments addressed an interest in ensuring that there are adequate measures in place to mitigate trademark issues. One commenter suggested that ICANN should require registry operators to adopt and implement rapid takedown or suspension systems and the second suggested best practices should be developed. Specification 7 to the draft new gTLD Registry Agreement describes the minimum requirements for Rights Protection Mechanisms, including the implementation of a Uniform Rapid Suspension System (URS), that registry operators are required to employ in their TLD.

Outside the URS or some other dispute mechanism, the interest in, and potential development of a registry-operated rapid takedown model has been discussed as part

of best practices for entities operating in the domain name ecosystem. Problems raised in some of these mechanisms include liability for decisions where there has been no formal decision regarding abuse. These discussions should continue and ICANN could lead them to consider development of an independent rapid takedown system.

In addition to the areas discussed above, the most recent version of the Registry Agreement contains a Registry Code of Conduct, intended to address several forms of potential market abuses.

ROOT ZONE SCALING

Key Points

- Making such support mandatory is prudent given the expectation that IPv6 demand is expected to grow dramatically following the depletion of the IPv4 number space.
- Making DNSSEC support mandatory is in the best interests of satisfying the expected global demand for DNSSEC by registrants, and of the increasing deployment of DNSSEC in general.
- The most recent study indicates that anticipated coincident introduction of IPv6, DNSSEC, IDN and new gTLDs has not occurred, that IPv6, DNSSEC and IDNs have been introduced without incident and that the effects of new gTLD introduction can be weighed on their own.

Summary of Comments

High Security Zones. ICANN should have proceeded with a High Security Zones Verification Program and made it mandatory for applicants. *Microsoft (9 Dec. 2010).*

IPv6. It is an error to impose IPv6 or to not allow for dual-stack or transitional mechanisms on applicants whose markets do not yet offer IPv6 capacity in a meaningful way. In this regard, attention is drawn to ARIN Policy Proposal 123. *E. Brunner-Williams (9 Dec. 2010).*

DNSSEC—“value-add” distinctions should be made. It is an error to impose DNSSEC without distinguishing between applications for which it adds value and those for which it only adds theoretical value. For proposals in which we can reasonably assume that significant transactional value will be exchanged within a name space, signing the parent zone and its leaf nodes is prudent (e.g., any “.bank” should be signed). For proposals in which we can reasonably assume that little transactional value will be exchanged within a name space, signing the parent zone and its leaf nodes has only nominal value (e.g., any “.museum” need not be signed). *E.-Brunner-Williams (9 Dec. 2010).*

Reports and studies. CADNA would like to see the reports and studies (and their authors) that back up ICANN's claim that introducing new gTLDs will not affect the security and stability of the DNS. ICANN should look towards a truly objective analysis based on hard numbers, facts and evidence. *CADNA (10 Dec. 2010).*

Analysis of Comments

High Security Zones:

We observe that mandatory support for High Security Zones does not appear to be a root-scaling issue. Discussion of the creation of HSTLDs continues and is discussed elsewhere in this document. Work on a High Security programme continues.

IPv6 Support

We observe that mandatory support for IPv6 does not appear to be a root-scaling issue; IPv6 glue has been present in the root zone for many years and no harmful effects have been observed to the generation, distribution or serving of the root zone.

New gTLD registries serve, in the general case, a global constituency. The presence or absence of commodity IPv6 services in the particular local region in which a new gTLD registry is located is not especially pertinent to the question of whether there is demand or necessity for IPv6 support by registrants located in regions where local market conditions are different.

Support for IPv6 in a registry schema, and in the TLD zone which is generated from data stored according to that schema, is largely unrelated to the availability of IPv6 transport, and hence to local market conditions.

It is best practice to distribute TLD nameservers across a wide topological and geographical area in order to add diversity to the system and make it less prone to failure due to localized conditions (e.g. the partition of a country from the Internet, or a natural disaster). Given that registry operators are guided to distribute nameservers in this fashion, the ability to deploy nameservers with IPv6 transport is unrelated to local market conditions.

Making such support mandatory is prudent given the expectation that IPv6 demand is expected to grow dramatically following the depletion of the IPv4 number space.

Mandatory Support for DNSSEC

We observe that mandatory support for DNSSEC does not appear to be a root-scaling issue; the deployment of DNSSEC in the root zone and the subsequent publication of trust anchors as DS RRsets in the root zone by many TLDs have yet to result in any observed harmful effects to the generation, distribution or serving of the root zone.

It is not reasonable to make assumptions about the usefulness or applicability of DNSSEC across a diverse population of registrants for any particular new gTLD. It seems reasonable given experience with other signed TLDs to expect that for any new gTLD, regardless of intended purpose, there will be some demand for registrants' zones to be signed. It is perfectly feasible, to build in an example mentioned in the comment, that a bank might choose a non-bank-specific gTLD when naming services for which DNSSEC is entirely applicable.

Whilst islands of trust have been used as a transition mechanism to allow early deployment of DNSSEC in some cases, it is not expected that this deployment strategy will scale given the complexity involved in trust-anchor distribution. Ensuring that DNSSEC is supported in new gTLD registries eases this complexity significantly, since key distribution to users of a service is largely no longer needed, keys being discovered by validators automatically from parent zones.

We observe that the usefulness of DNSSEC as a component contributing towards the security and stability of the DNS increases as it sees greater deployment; demand for validation increases as the number of signed zones increases, for example.

Making DNSSEC support mandatory is in the best interests of satisfying the expected global demand for DNSSEC by registrants, and of the increasing deployment of DNSSEC in general.

Reports and Studies

SSAC published a report¹ on root scaling in August 2009. The study indicated that controlled delegation rates, rather than total number of delegations, were a key aspect in maintaining root zone stability.

ICANN published a report² in September 2009 which provided a quantitative model of the root zone which was used to simulate scenarios relevant to root scaling.

ICANN published a study³ in October 2010 analysing the project effects of recent and projected events on root zone stability. The study indicates that anticipated coincident introduction of IPv6, DNSSEC, IDN and new gTLDs has not occurred, that IPv6, DNSSEC and IDNs have been introduced without incident and that the effects of new gTLD introduction can be weighed on their own. The paper indicates that, at projected delegation rates, root zone stability will not be denigrated by the delegation and operation of new gTLDs.

¹ "Scaling the Root – Report on the Impact on the DNS Root System of Increasing the Size and Volatility of the Root Zone", 31 August 2009, <http://www.icann.org/en/committees/security/sac046.pdf>

² "Root Scaling Study: Description of the DNS Root Scaling Model", 1 October 2009, <http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>

³ <http://www.icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>

The ICANN board consulted root server operators in September 2010⁴ and was informed that all root servers (and related DNS provisioning infrastructure) are capable of accommodating 1000 new gTLDs per year.

ICANN has committed⁵ to limit the number of applications that will be processed to 1000 per year, a measure that is consistent with the advice provided by root server operators and with the studies analyzing maximum application processing rates.

STRING SIMILARITY AND STRING CONTENTION

Key Points

- One comment suggests prioritizing one community-based application over others, addressing subsets of a community
- One comment proposes separate treatment for not-for-profit organizations to address the disadvantage such organizations may have in auction situations
- One comment claims that similar strings applied for by the same applicant should not be considered in contention
- One comment requests that appropriate linguistic expertise be engaged in the string similarity review panel
- Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis.
- The Guidebook is being revised to provide clarification on the assessment of support and opposition in a Community Priority Evaluation.

Summary of Comments

Similar string/synonym gTLDs—market differentiation. ICANN should address the issue of confusingly similar strings to prevent defensive registrations and user confusion (e.g. applications for .music, .song, .tune, etc.) An effective policy that gives priority to one community-based application that serves all legitimate community stakeholders is highly recommended. dotMusic (10 Dec. 2010).

⁴ “Adopted Board Resolutions, Trondheim, Norway”, ICANN Board of Directors, 25 September 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3>

⁵ <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3>,
<http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#2>

Auctions—Impact on not-for-profits/NGOs. The ICANN Board should instruct Staff to reconsider the impact of the auction procedure on not-for-profit organizations/NGOs. The auction procedure will likely put not-for-profits/NGOs with limited budgets at a distinct disadvantage in acquiring new gTLDs that are desired by two or more parties. P-NPOC (1 Dec. 2010). Red Cross (9 Dec. 2010).

String Contention Sets (2.2.1.1).

String Contention Sets must not include similar strings requested by a single applicant seeking linguistic variations of the applicant's other applied-for string. If String Similarity Reviews were strictly applied, variations of a TLD string might be placed into a contention set even though the strings would be operated by the same applicant, for identical purposes, in multiple languages and/or scripts. That would not be a logical or intended result of the String Similarity Review. BC (6 Dec. 2010). CADNA (10 Dec. 2010).

Improve string similarity review procedure. As the string similarity judgment is subjective, it is expected that ICANN should provide a fair and open mechanism for comments and objection during the string review and dispute resolution process. ICANN should work out a feasible procedure so that linguists coming from the string language community can be engaged in the string similarity review panel, and ICANN should seriously consider the suggestion of the corresponding community. Internet Society of China (10 Dec. 2010).

Analysis of Comments

The comment proposing prioritization of applications according to a conceptual hierarchy based on the meaning of the strings would, in the general case, implicitly assume both a) that such strings be considered in contention with one another and b) that the contention be resolved by prioritizing the application with the widest reach. In general, the assumptions a) and b) have no grounds in the adopted policy and are alien to the approach followed in the Application Guidebook. However, for the specific case of a community application in contention, the Community Priority Evaluation scoring duly considers the extension of the community, the reach implied by the meaning of string and the corresponding relevance of any opposition registered. This amounts to a balanced assessment of the acceptability of the application in relation to the community addressed, as reflected in the overall score in relation to the threshold for affording Community Priority. The proposed position is not to modify the approach in the light of this particular comment.

The comment proposing separate treatment of non-profit organizations as applicants in string contention resolution situations, in particular with a view to avoid (or compensate them in) auctions, implies a similar preferential handling of such applicants in string contention resolution as provided for community applications. However, there is no policy ground for granting any preferential treatment in string contention situations based on the applicants' legal or organizational structures and the proposed position is not to modify the process in this regard. The comment implicitly suggests introducing a

new application category for non-profit organizations, which is a matter addressed elsewhere.

The comment claiming that confusingly similar strings in applications lodged by the same applicant should not be considered in contention invokes an array of potential policy issues, as previously addressed in conjunction with version 4 of the Applicant Guidebook. Quite clearly, those policy issues need first to be resolved to safeguard avoidance of user confusion both in the short and the long run, and the proposed position is to await the development of such policies before considering the suggestion. It deserves to be mentioned that IDN variant strings within the scope of a single application is a different matter, as addressed elsewhere in the Applicant Guidebook.

The comment requesting that appropriate linguistic expertise be engaged in the string similarity review panel is very well taken and, indeed, one of the requirements foreseen for the procurement of panel providers.

COMMUNITY PRIORITY EVALUATION

Key Points

- A comment expresses concern about gaming or inappropriate use of the community priority evaluation which may harm community-based applicants and requires proper training and guidelines for the evaluators.
- A comment expresses concern that the uniqueness aspect of criterion 2 (Nexus) could be used to exclude some community-based applicants.
- A comment suggests that Criterion 3 (Registration Policies) could inappropriately award points to an applicant for restricting registrations in the TLD.
- A comment suggests that name selection and content/use should be considered together in regard to criterion 3 (Registration Policies).
- Some comments request further specification on the weighting of support and opposition in criterion 4 (Community Endorsement).
- Some comments proposed lowering the scoring threshold for community priority evaluation from 14 to 13 points, while another comment supported the scoring criteria and suggested that the current threshold be retained.
- A comment suggests that fears of gaming are given a higher value in the process than trust for community-based applicants.
- Some comments proposed additional points for date of establishment of the TLD initiative, and documented outreach activities.
- Some comments state that community-based governance mechanisms should be part of the criteria.

Summary of Comments

Third party evaluators guidelines. It is imperative that appropriate training and guidelines are given to the third party evaluators which are consistent with the

foundations of ICANN's AOCs to prevent harm to genuine community TLD applicants and prevent gaming of the process through loopholes. *dotMusic (10 Dec. 2010)*.

Community accountability. The current evaluation process gives points to applicants that restrict registrations to members of the community. That is a wrong process since many communities are based on behavior, not formal membership. On the other hand there is no provision requiring a community-based gTLD applicant to prove that the gTLD will be subject to a credible community governance process. The litmus test for credible community accountability is whether there is an objective governance process by which the respective community can replace the individuals in charge of day-to-day operations of the TLD. *W. Staub (10 Dec. 2010)*.

Community priority evaluation (4.2.3).

Given the possibility that some applicants will try to take advantage of loopholes which would prevent community TLDs scoring higher than standard TLDs, one extra point in the Community Priority Evaluation should be given for the conditions specifically stated in dotBERLIN's comments. *dotBERLIN (9 Dec. 2010)*. *.GMBH (9 Dec. 2010)*. *dotMusic (10 Dec. 2010)*.

In the definitions and guidelines of criterion #4 further specification of the weighting of support and opposition should be provided. The current community evaluation scoring system does not fully support the goal of scoring community TLDs higher than standard TLDs, especially regarding the weight attributed to some objections from the community in comparison to support of big parts of the community (+/- 2 points). *DOTZON (9 Dec. 2010)*. *dotHOTEL (10 Dec. 2010)*.

The criterion 4 guidelines regarding opposition must be aligned with the objectives of the new gTLD program. The words "not compatible with competition objectives" should be added to section 4.2.3 of Community Priority Evaluation Criteria (page 4-18—i.e., "sources of opposition that are ...not compatible with competition objectives....will not be considered relevant"). *dotMusic (10 Dec. 2010)*.

Community priority in string contention (4.2.1). Section 4.2.1 should provide that an application must score at least 13 (not 14) points to prevail in a community priority evaluation. The intention of community priority will not be realized if Community applicants cannot reasonably reach the 14 point threshold (e.g. just 2 objection filings would make it impossible for an applicant to achieve the required 14 points). The BC remains unconvinced that the ICANN Staff has adequately analyzed the possibility and probabilities of applicants reaching 14 points. *BC (6 Dec. 2010)*. *RNA Partners (10 Dec. 2010)*.

Community priority evaluation criteria (4.2.3).

Regarding criterion 2, the requirements for nexus and uniqueness are too stringent and may disqualify worthy applicants from being considered a Community. *MarkMonitor (Module 4, 7 Dec. 2010)*.

Do not modify community scoring. ICANN should ignore pleas to modify at the last minute the community scoring from self interested candidates. *F. Krueger (10 Dec. 2010). Bayern Connect (10 Dec. 2010).*

Flaws in community procedures.

The procedure as defined in the proposed final AG has no element of trust for the community applicant and is so motivated by the fear of gaming that it may have now become almost impossible for a new gTLD to viably declare itself as a community gTLD. The AG plan deviates substantially from the GNSO recommendations IG-H. There is no balanced adjudication of comparative claims by a DRSP as recommended by IG-H. Instead there is just a grading set that would allow a preponderance of evidence of community support for one applicant to be overruled by two skills working for a competitor (criterion 4B). The AG also has removed a point for a name that had other meanings—i.e. any community whose name is also a common word, proper or otherwise, will lose 1 point. These two conditions together are enough to exclude many communities from consideration, yet they say nothing about the validity of a community application and have nothing to do with criteria set in the GNSO Recommendation’s IG-H. Communities have been treated with suspicion, and not with the special care intended by the GNSO’s recommendations. It would be best if communities vying for the same name were subjected to comparative evaluation by a DRSP. Alternatively conditions 2B and 4B should be removed or at a minimum should be subject to greater refinement. *A. Doria (Module 4, 9 Dec. 2010).*

Ideally, eligibility, name selection and content and use should be considered together, and the result should be rated from 0 to 3. At the very least, name selection and content and use should be considered alternative, not cumulative solutions, or decrease the “pass” scoring to 13. The current version of the scoring leads to undesirable results: it promotes adopting unreasonable registration policies, while on the other hand it would prevent not just the most reasonable but even the most restrictive existing community/sponsored TLDs from passing the test. *A. Abril i Abril (Module 4, 10 Dec. 2010).*

Balancing support and opposition. ICANN should follow this approach: Consideration will be given to the extent, both amount and relevance, of the overall endorsement that has been submitted by the applicant, which will be compared to the extent, both amount and relevance, of the opposition expressed; care will be taken to balance the support and the opposition in any determination. *dotGay (Module 4, 10 Dec. 2010).*

Analysis of Comments

A comment expresses concern about gaming or inappropriate use of the community priority evaluation which may harm community-based applicants. Arriving at the best outcome in a contention situation requires careful balancing of several variables, and this is the reason that a number of factors are included in the analysis. The process is intended to support good-faith community applicants, but the outcome of any given case

cannot be guaranteed. The requirement of appropriate training of and guidelines for evaluators is well taken and in line with the foreseen process.

A comment expresses concern that the uniqueness aspect of criterion 2 (Nexus) could be used to exclude some community-based applicants. This criterion is intended to offer a higher score where the analysis is straightforward and the claim of priority more obvious. This does not mean that an application featuring a non-unique name as the TLD string would be disqualified, simply that in this case the claim of priority is subject to greater interpretation and thus requires more complex analysis.

A comment suggests that Criterion 3 (Registration Policies) could inappropriately award points to an applicant for restricting registrations in the TLD. Restrictive registration policies may receive a high score in certain cases; however, this is not necessarily true in every case. The Guidebook states in the guidelines on this criterion: “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.”

A comment suggests that name selection and content/use should be considered together in regard to criterion 3 (Registration Policies). ICANN does not see these as linked: a registry could easily allow registrants to register any name they chose, so long as the content of corresponding websites conformed to its established policies. Alternatively, a registry could also allow registrants to use names for any purpose, so long as they conformed to the name selection policies (e.g., names must be in the form of <name of organization.TLD>.

Some comments request further specification on the weighting of support and opposition in criterion 4 (Community Endorsement). The Guidebook provides guidance on the analysis that occurs in this area. The concerns about attempts to influence the outcome of a community priority evaluation by virtue of the volume of submissions favoring a particular outcome are understood. ICANN does not expect the analysis to consist merely of mathematical comparisons, or to automatically penalize applicants for objections (in which, to reach the contention resolution stage, the applicant would have prevailed) without additional consideration of the context. Specifically, the Guidebook states:

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, or filed for the purpose of obstruction will not be considered relevant.

The Guidebook makes this point with regard to opposition, and is being revised to provide this clarification in the area of support also. Furthermore, the proposal to add “not compatible with competition objectives” is a worthwhile clarification in the explanation for criterion 4.

Some comments proposed lowering the scoring threshold for community priority evaluation from 14 to 13 points. As stated in the Guidebook:

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.

Another comment supported the scoring criteria and suggested that it be retained. As noted previously, it is obvious that interests and opinions diverge. No new arguments for either solution have been raised in this comment round. Some previous concerns, regarding for example the risk of failing due to unfounded obstructionist objections, have been addressed in the explanatory comments in version 4. This discussion has resulted in considerable and intensive discussions with the community. The Guidebook will keep the scoring threshold at 14 out of 16 points.

A comment suggests that fears of gaming are given a higher value in the process than trust for community-based applicants. It is in fact the intention to design a process that does not facilitate easy abuse, and this necessarily means that community-based applications must undergo some scrutiny if they are claiming a priority over other applications on this basis. This is in line with the GNSO Implementation Guideline 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

It should be recalled that no evaluation of community credentials takes place unless the community-based applicant is claiming a priority as a result of string contention.

Some comments proposed additional points for date of establishment of the TLD initiative, and documented outreach activities. As noted previously, the addition of points for "early" (although post-New-gTLD-PDP-conclusion) establishment of applicants seems inappropriate from two perspectives. First, the crucial criterion regarding "pre-existence" is already included. Second, the "pre-existence" criterion relates to the community, not to the applicant per se. The community is the central concept of interest here, while the entity/ies representing the community may change

over time for various reasons, without dates for such changes reasonably justifying any differences in scoring. The proposed position is not to modify the scoring in this regard.

Some comments state that community-based governance mechanisms should be part of the criteria. To add points for a multi-stakeholder governance structure in general, or regarding policy development in particular, certainly has some merit but would add considerable complexity to the assessment and require additional compliance measures post-delegation. The community priority evaluation is not intended to be a means of requiring various types of community representation models. However, it is expected that an accountability to the community is present, as demonstrated by the other criteria (e.g., delineation of the community, registration policies, and documentation of support).

VARIANT MANAGEMENT

Key Points

- ICANN will continue to support study and development activities toward a variant management solution for the top level, so that users around the world will be able to take advantage of increased opportunities in a secure and reliable DNS.

Summary of Comments

IDN Variant TLDs (1.3.3). Methods for resolving variant TLD conflicts should be identified and communicated to the community well in advance of the launch of the new gTLD program. The methods used to resolve such conflicts could materially affect the way in which applicants prepare their respective submissions. *MarkMonitor (Module 1, 7 Dec. 2010)*.

Paired delegation of Simplified Chinese and Traditional Chinese gTLDs. The AG should allow the paired delegation of Simplified Chinese (SC) and Traditional Chinese (TC) gTLDs to bring better usability and readability to millions of Chinese Internet users. To Chinese users, SC and TC are one language and they are identical. Based on millions of Chinese users' rights of using the Internet and usability and readability, we encourage and welcome paired delegation of SC and TC gTLDs.

We have growing concerns about whether it is compliant with ICANN's Bylaws to avoid this challenge of variant management especially when it is affecting billions of global users' rights of using the Internet. Any attempt to separate SC from TC would constitute a cultural segregation because it would lead to user confusion and the marginalization of millions of users who view SC and TC as essentially identical.

Allowing SC and TC strings identically adopted as IDN TLDs offers tremendous convenience to Chinese users whose keyboards, input methods, and sometimes

display methods support only one or the other. Some research has shown that Chinese users expect both versions of domain names to be held and used by the same registrant. A 2009 CNNIC survey indicated that 95% of respondents are eager to own pure Chinese domain names.

Based on this research, CNNIC strongly opposes delegating only one version of a Chinese gTLD to an applicant, which will surely deprive the registry operator, CDN registrants and Chinese users worldwide of the right to properly use CDNs.

CNNIC (30 Nov. 2010). CDNC (9 Dec. 2010).

CDNC recommends amending the AG to reflect paired delegation of SC and TC versions of domain names to one applicant at one time. The String Similarity Panel (2.4.1) should be divided into two parts: a string similarity panel for proposed labels in Alphabetic/Phonetic scripts and a CDN evaluation panel for proposed labels in Chinese characters. The Registry Agreement should be amended to reflect that a CDN and its preferred variant will be seen as one TLD for review, approval, and contractual purposes, per current practice at the second level for Chinese TLDs. The new gTLD plan should also permit single character CDN TLDs. *CDNC (9 Dec. 2010).*

Given the practicality and viewability of IDNs in the Chinese language, variant strings in Chinese must be delegated to the same IDN TLD manager for the new gTLD to work seamlessly. This principle of delegation is necessarily applicable to Chinese IDN TLDs when the simplified and traditional Chinese characters are interchangeable and both widely used by the Chinese language community at large. HKIRC recommends that the guidebook be amended to reflect that variants of an applied-for Chinese IDN TLD will be delegated to the same successful applicant on condition that a workable variant management mechanism is provided. *HKIRC (22 Dec. 2010).*

Analysis of Comment

A comment suggests that more information is needed on the mechanisms used for resolving variant TLD conflicts. As described in section 1.3.3 of the Guidebook, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented. Where multiple applicants apply for strings that are identified by ICANN as variants of one another, the applications will be placed in a contention set and will follow the established contention resolution procedures.

Other comments on this subject express that a means for delegating variants at the top level is needed in the case of simplified and traditional Chinese.

It is noted that IDN ccTLD variant strings involving the simplified and traditional Chinese scripts have been delegated, and it is expected that the experience gained through the IDN ccTLD Fast Track will inform these community discussions going forward and help

enable a workable approach for the gTLD namespace. The references and information provided in these comments are very useful and appreciated.

In authorizing the delegation of these IDN ccTLDs, the Board resolution noted that the methodology to be taken by the IDN ccTLD manager to handle these particular instances of parallel IDN ccTLDs is, in the short-term, the only option available, but there are serious limits to where such an approach is viable in practice, so that it cannot be viewed as a general solution. Consequently, long-term development work should be pursued. The Board directed that, “significant analysis and possibly development work should continue on both policy-based and technical elements of a solution for the introduction on a more general basis of strings containing variants as TLDs.” (See <http://www.icann.org/en/minutes/resolutions-22apr10-en.htm>).

It is understood that script cases and practices vary around the world, and that variants are critical to good user experience for a number of Internet users. It is expected in the long term that variant TLDs will be supported and delegated to the same TLD operator. The task is to define a clear and globally supported understanding of the definition of variant TLDs, and what policies and user expectations can attach to these.

As resolved by the Board in November, ICANN is proceeding with the implementation of an IDN Variant Issues project. The current plan proposes the creation of teams composed of community experts in linguistics, DNS, registry operations, and policy.

Specifically, ICANN proposes to conduct five case studies (suggested cases are Chinese, Arabic, Latin, Indic, and Cyrillic) to investigate the set of issues that need to be resolved to facilitate a good user experience for IDN variant TLDs. From these five case studies, an Issues Report will be created.

ICANN will continue to support study and development activities toward a variant management solution for the top level, so that users around the world will be able to take advantage of increased opportunities in a secure and reliable DNS.

GEOGRAPHICAL NAMES

Key points

- ICANN will comply with a legally binding decision from a court of competent jurisdiction.
- A government approving an applicant could impose, as a condition or support or non-objection, that the registry be operated under the legal framework of the country.

- In accordance with GAC advice, country and territory names will be reserved at the second level, but can be released through a defined process, which could be similar to the .INFO procedure.
- No changes will be made to the treatment of city names in the applicant guidebook.

Summary of Comments

Jurisdiction.

It is not clear to the Ministry under what circumstances a potential new TLD falls under and is operated under Danish jurisdiction or other national jurisdictions and under what circumstances it falls under and is operated under California jurisdiction. This is of course especially relevant in cases where the TLD has a relation to Denmark in some form or other (e.g. geographic TLDs). *Danish Ministry (10 Dec. 2010).*

TLDs related to a geographical area should be governed by that area's jurisdiction (e.g., ".denmark" or ".jylland" should be governed by Danish law and not other jurisdictions). Without a promise to respect state court decisions in relation to a given geographical TLD, it will become difficult to enforce consumer's rights in the country in question. *DIFO (15 Jan. 2011).*

The guidebook does not take into account several possible scenarios regarding TLDs of geographic interest. It is unclear how ICANN would react to scenarios such as, e.g. if a government withdraws a non-objection letter for a geoTLD application (e.g. if the registry subsequently changes the thematic focus of its services) or when an application is filed as a standard application but infringes on governments' (or local authorities') rights or public interests. *Danish Ministry (10 Dec. 2010).*

In the various documents it is of utmost importance to be clear on which jurisdiction ICANN is talking about. There are differences in wording about courts and jurisdiction in DAG4, in the proposed sample letter in the AG, in Article 7.13 of the Registry Agreement and in the 23 November letter of Peter Dengate-Thrush. This should be looked into and the text should be revised to clarify that ICANN will comply with a legally binding court order from the relevant court in the jurisdiction of the government or public authority that has given the support to the applicant. *UNINETT (Module 2, 10 Dec. 2010).*

The wording of the current version of the AG regarding ICANN's duties in the case of a post-delegation withdrawal of government support has been considerably weakened compared with version 4. The AG text should be brought in line with the wording in the 23 November 2010 letter by Peter Dengate-Thrush to the GAC (i.e., "ICANN will comply with" in that letter, not "ICANN may implement" in the proposed sample letter and in Article 7, clause 7.13 of the New gTLD Agreement). As it stands the local administration has no guarantee that ICANN will follow a legally binding decision in the relevant

jurisdiction (which should be the jurisdiction of the country served by the geographical TLD) if there has been a dispute between the government/public authority and the applicant. This may reduce the willingness of governments to support applications for geographic names. *UNINETT (Module 2, 10 Dec. 2010).*

Country names.

Thought should be given to country names such as “England” in section 2.2.1.4. It is not an ISO 3166-1 country name, so it is not excluded under section 2.2.1.4.1. It is a sub-national place listed in ISO 3166-2 but it does not have a sub-national government or public authority (in contrast to Scotland, Wales and Northern Ireland which have sub-national governments which could provide support for a geographic TLD application). England’s affairs are governed by the national government of the United Kingdom. The following addition is suggested for section 2.2.1.4.2 paragraph 3: “If no sub-national government or public authority exists for a sub-national place name that is listed in the ISP-3166-2 standard then the associated national government will be accepted as the relevant authority.” *D. Sayers (Module 2, 30 Nov. 2010).*

Clarification on reserved country names at second level. Clarification is needed as to which forms from the ISO 3166-1 need to be reserved at the second level. In 5.1, what is meant by the expression “short form (in English)”? Does this refer exclusively to the English short country names used by the ISO 3166 Maintenance Agency? There is some confusion because the ISO 3166-1 list also contains two and three-letter country codes. Does the “short form” referred to in the AG also include the two and three-letter codes? *K. Golovina (Module 5, 10 Dec. 2010).*

Release of country names. The procedure for release of country names in Module 5 should be clarified. Are the rules and procedures for release referred to in Module 5 entirely up to the discretion of the registry? Will it be necessary to apply for official approval from ICANN before releasing the names? *K. Golovina (Module 5, 10 Dec. 2010).*

Country or territory names (2.2.1.4.1).

Will the Geographic Names Panel reject an application that is considered to be similar to an alpha-3 code, long form or short form name, or must the string be an exact match to the alpha-3 code, long form or short form name to be considered a country or territory name? *MarkMonitor (Module 2, 7 Dec. 2010).*

HKIRC supports and appreciates the exclusion of strings that are country or territory names on the ISO 3166-1 list, their translations in any language, abbreviations, permutations, and transpositions, from this application round of new gTLDs. HKIRC opines that these strings shall always be protected and never made available for application through a gTLD process. *HKIRC (22 Dec. 2010).*

Capital City names (2.2.1.4.2).

In case an ostensibly “good faith” applicant for confusingly similar strings like .pari or .belin shows up he can easily drag a .paris or .berlin application into a contention set

with a subsequent auction. This may end up in a scenario where the cityTLD applicants are forced to pay a high redemption fee. We think it is not acceptable that malicious TLD applicants make cityTLDs a target for blackmail. *dotBERLIN (9 Dec. 2010)*.

ICANN should further expand the scope of protection of geographical names in the first round and take into consideration capital city names, city names as well as sub national geographical names in ISO 3166-2. Also, special cases should be considered properly – e.g. in China, provinces, directly-administrative municipalities, and self-autonomous regions with full names and abbreviation names. *Internet Society of China (10 Dec. 2010)*.

City names. Allowing individuals to purchase city names is contrary to settled policy and will only lead to consumer confusion. The expectation that names associated with territorial jurisdictions are in fact public resources is an expectation that has been fostered by IANA and ICANN for the past 15 years. To make the argument that the new gTLD evaluation process cannot rationally implement a check for government support or non-objection because of the listed difficulties is not supported by the evidence. Only applications which have government support or which can demonstrate non-objection should be allowed by ICANN, and no private individual should be allowed to assume the color of government. *E. Brunner-Williams (10 Dec. 2010)*.

City names Several choices exist for lists of cities. Lists such as “table 8, Population of Capital Cities and Cities of 100 000 or More Inhabitants” <http://unstats.un.org/unsd/demographic/products/dyb/dyb2008/Table08.xls> published in the *United Nations Demographic Yearbook*, or Thomas Brinkhoff’s list of the 479 agglomerations of the world with a population of 1 million inhabitants <<http://www.citypopulation.de>>, used above to consider the non-uniqueness issue, can be used. *E. Brunner-Williams (1 December 2010)*

.Brand TLDs—second level prohibition of country and territory names. For brand owners wishing to obtain .brand gTLDs, the prohibition of country and territory names at the second level hampers their ability to market regionally. Special considerations should be made for these types of gTLD registries. *MarkMonitor (Module 5, 7 Dec. 2010)*.

Geographical TLDs should be registered as ccTLDs. If new gTLDs are introduced, geographical TLDs should be registered as ccTLDs, not as gTLDs. *DIFO (15 Jan. 2011)*.

Commonly used names. We fully support the GAC position on enhancing and extending geographic protection of strings to include those that are considered as “commonly used names.” One possibility is to allow the “owners” of these geographically protected strings to select the best name, which represents their protected strings (possibly an abbreviation as the literally protected string could be too long and impractical for use as a gTLD). *Arab TLD Committee (Module 1, 16 Jan. 2011)*.

Analysis of Comments

APPLICABLE LAWS AND REMEDIES FOR POST DELEGATION DISPUTES

Which laws will be applicable to a successful applicant?

The successful applicant will be required to enter into a Registry Agreement with ICANN, which is a California nonprofit public benefit corporation.

Disputes arising under or in connection with the Agreement 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.

For registries that are intergovernmental organizations or governmental entities or other special circumstances, the arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by the Registry Operator and ICANN.

On the issues of whether TLDs related to a geographical area should be governed by the legal system of that area. In correspondence to the GAC on 23 November 2010, the ICANN Board Chair suggested that the government approving the applicant can impose that requirement on the applicant as a condition of support or non-objection. While an agreement between the gTLD registry and the government or public authority would not be enforceable by ICANN, ICANN would comply with a legally binding decision from a court of competent jurisdiction.

Will ICANN comply with a legally binding court order from the relevant court in the jurisdiction of the government or public authority that has given support to the applicant?

Yes, 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 applicant as required in the rules for geographical names.

In response to oral comment, received during meetings with the ccNSO and the GAC in Cartagena, ICANN committed to reinserting language consistent with the version 4 Guidebook language in the *Sample Letter of Government Support* in the next version of the Applicant Guidebook, namely:

[Government / public authority] further understands that ICANN *will comply* with a legally binding decision in the relevant jurisdiction where there has been a dispute between [government/public authority] and the applicant. (Emphasis added.)

In addition, the next version of the Guidebook will also contain information advising the applicant that ICANN *will comply* with a legally binding decision in the relevant

jurisdiction where there has been a dispute between the relevant government or public authority and the registry operator. (Emphasis added.)

It should be noted that ICANN's commitment to comply with court orders is to the government or public authority, rather than the registry operator. Therefore, as the obligation is to the government/public authority, that obligation is described in some place in the Guidebook other than the registry agreement. The registry agreement is a bilateral contract between ICANN and the registry operator – it sets forth ICANN's obligations and rights with respect to the registry operator and vice-versa, and is not the appropriate place to describe ICANN's commitments to governments.

On this basis, the language contained in the Registry Agreement related to Government Support stating, is appropriate as a signal of ICANN's obligation that is stated elsewhere, inter alia, "... in the event of a dispute between such governmental entity and Registry Operator, ICANN *may implement* the order of any court sitting in such jurisdiction in favor of such governmental entity related to the TLD." (Emphasis added.)

What other options are available to governments/public authorities to remedy disputes with supported applicants who change the thematic focus of its services, or is no longer complying with the terms under which the letter of support, or non-objection was provided?

Governments or public authorities that provide support, or do not object to, an application for a geographic name TLD, may enter into an agreement with the applicant, which sets out the terms and conditions of their support. A *Sample Letter of Government Support* is provided as an Attachment to Module 2 of the Applicant Guidebook as guidance to applicants and governments. This includes an optional paragraph, which notes that there will be a separate agreement outlining the conditions under which the Government or public authority supports the applicant in the operation of the TLD, and circumstances under which support would be withdrawn.

As a guiding principle, it is considered important that a government or relevant public authority be able to show through a defined process that a registry operator has deviated from the conditions of original support or non-objection. In addition to ICANN complying with a legally binding court order; the Registry Restrictions Dispute Resolution Procedure is also available for resolving post-delegation disputes that may arise between the relevant government and public authority that supported, or did not object to, the geographic name new gTLD application, *provided the application was submitted as a community-based TLD*. (The government could require that the TLD applicant apply as a community based TLD as a condition of governmental approval – thereby making these remedies available to the government.)

The remedies that can be recommended to ICANN under this procedure include:

- Remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;

- Suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- Providing for the termination of a registry agreement.

RELEVANT GOVERNMENT OR PUBLIC AUTHORITY

What is considered the ‘relevant’ government or public authority to support an application for a country or territory name, or a sub-regional name?

The comments stated that England is not listed in the ISO 3166-1 standard and as such is not a country or territory name as defined in the Applicant Guidebook, but is a sub-national place name as listed in the ISO 3166-2 standard and that the relevant government is, in this instance, the national government of the United Kingdom.

To provide guidance to applicants, the Guidebook identifies the level of government/public authority support it ‘anticipates’ would be required for the different geographic name categories nominated in the applicant guidebook, i.e., national government approve applications for capital city names and state; provincial or local governments approve applications for sub-national (including city) place names. However, this is provided as guidance only and it is the applicant’s responsibility to ascertain from enquiries with government officials the relevant level of government support required for a geographic name as defined in the applicant guidebook. The Guidebook also suggests that to assist in determining whom 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 <http://www.gac.icann.org/gac-representatives> .

The applicant guidebook contains a *Sample Letter of Government Support* as an attachment to Module 2. This letter suggests that the author of the letter confirms they have the authority of the government/public authority to be writing on this matter. The letter also recommends an explanation of the government entity, relevant department, division, office or agency, its functions and responsibilities to be included in the letter.

RESERVATION OF COUNTRY AND TERRITORY NAMES AT THE SECOND LEVEL

Clarification required on the reservation of country and territory names at the second level; the process for release; and .brand names should be excluded.

The reservation of country and territory names at the second level is the result of consultations between the ICANN Board and the Governmental Advisory Committee (GAC) on the implementation of the GAC Principles regarding new gTLDs, specifically paragraph 2.7⁶. Correspondence relating to this matter can be found at:

⁶ Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level or

- The first letter was from ICANN CEO to the GAC Chair on 17 March 2009
<http://www.icann.org/en/correspondence/twomey-to-karklins-17mar09-en.pdf>
- The second letter was from GAC Chair to ICANN CEO on 24 April 2009
<http://www.icann.org/en/correspondence/karklins-to-twomey-24apr09.pdf>
- The third was from the GNSO Council to GAC Chair on 15 May 2009
<http://gns0.icann.org/correspondence/gns0-ltr-to-gac.pdf>
- The fourth was from GAC Chair to ICANN CEO on 26 May 2009
<http://www.icann.org/en/correspondence/karklins-to-twomey-29may09-en.pdf>

The “short form (in English)” does refer specifically and exclusively to the short form of countries, in English, as listed in column 2 of the ISO 3166-1 standard. (See Section 6.1 of ISO 3166-1:2006, or an extract of this column from the standard at http://www.iso.org/iso/english_country_names_and_code_elements)

The short form does not include other columns of the ISO 3166-1 standard, such as the alpha 2 and the alpha 3 codes listed. However, all two character labels are reserved separately in accordance with Specification 5 of the Draft Registry Agreement.

What are the rules for the release of country names at the second level?

The rules for the release of country and territory names at the second level should be developed in accordance with advice provided to the ICANN Board by the GAC <http://www.icann.org/en/correspondence/karklins-to-twomey-29may09-en.pdf> on 29 May 2009.

The GAC advice includes:

“...that in their applications the registries should be asked to indicate how they intend to incorporate GAC advice in their management of second level domains. The GAC (and the rest of the ICANN community) should then be invited to comment on the appropriateness of proposed measures.

In their considerations the registries may draw on existing methodology which is based on the successful process developed for the reservation, and release of country names under .info”

The Applicant Guidebook provides guidance for the applicant on this issue in the Attachment to Module 2. The Evaluation Questions and Criteria contain the questions that the applicant will be asked when applying for a new gTLD. Q22 relates to the protection of geographic names and states that the applicant is required to:

any new gTLD; b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

- 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.

Notes to this question provide:

- Applicants should consider and describe how they will incorporate GAC advice in their management of second-level domain name registrations. See “Principles regarding New gTLDs” at <http://gac.icann.org/gac-documents>. For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. Proposed measures will be posted for public comment as part of the application. Information about the .INFO procedure is available at: <http://gac.icann.org/press-release/reservation-country-names-dot-info-icann-board-resolutions-10-september>

In addition, the Draft Registry Agreement contains the following:

Draft Registry Agreement

Paragraph 2.6 Reserved Names of the Draft Registry Agreement, states in part “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 in (Specification 5)”. Specification 5 provides a schedule of reserved names at the second level of gTLD registries, including:

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;

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.

Why do .brand TLDs have to follow the same second level prohibition for country and territory names?

It is appreciated that .brand TLDs may wish to use country and territory names at the second level of their TLD to replicate operations or business models and that the

process could be seen as restricting their ability to market regionally. However, brand owners are required to follow the same requirements in accordance with the advice provided by the GAC. While the .info procedure is nominated as the example process to follow, it may be possible that a more simplified proposal would be acceptable given that it would be one entity, rather than a number of unknown entities/registrants, seeking to register a country or territory name in a TLD. However, this would require consultations with the GAC to gain their views on this issue. One reason for the .info procedure is to protect sovereign rights associated with country and territory names at the second level. In the case of a .brand TLD, the brand owner can demonstrate that second level registrations do not interfere with those rights and ask the government for release of the names.

GTLD VERSUS ccTLD

Should geographical TLDs be registered as ccTLDs?

In response to concerns raised by the ccNSO and the GAC that making country and territory names available in the new gTLD program would blur the distinction between ccTLDs and gTLDs, the Board has agreed not to make country and territory names, as defined in the applicant guidebook, available in the first round of the new gTLD program pending the outcome of policy discussions by the ccNSO. The Board has acknowledged that defining the distinction between country code and generic names may warrant broader cross community policy discussion between ICANN's Supporting Organizations and Advisory Committees.

Country and territory names are conceptually related to ccTLDs, and it is reasonable that consideration be given to whether these names should be available as gTLDs or ccTLDs. However, it does not necessarily follow that all geographic TLDs should be registered as ccTLDs. The PDP that was undertaken by the GNSO, while not recommending a category of TLD for geographic names, does provide a structure and process that allows the addition of geographic TLDs under the new gTLD program.

There has been considerable discussion within the community suggesting the introduction of finer categorization of types of TLDs (i.e., something other than a ccTLD or gTLD). ICANN is a strong proponent of innovative uses of new TLDs. This is especially so in cases where TLDs can be delegated to address the needs of specific communities such as intergovernmental organizations, socio-cultural groups and registered brands. Rather than having ICANN limit this type of innovation and identification with certain TLD models, more creativity might be spawned by allowing different groups to self-identify the type of TLD they purport to be and promote that model among their community. If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant. Socio-economic groups, brand owners and other groups all can be accommodated under the existing structure and self-identify as a particular type of TLD. Over time, the market and

community interests will sort TLD types – a model preferable to having ICANN make that determination a priori.

It may well be that as definitive categories of applicants emerge in practice, and as ICANN and the respective communities gain further experience of possible benefits of additional TLD categorization over time, organizational structures might be developed with ICANN to reflect these categories. That will be a consequence of bottom-up policy developments by affected participants, according to the ICANN model. Nothing in the current implementation procedures forecloses those future developments.

CITY NAMES

Why can't the Applicant Guidebook include reference to a list of city names that require government approval in order to be delegated? (Comments include reference to existing lists.)

The lists suggested through public comments are useful reference documents for applicants to consult when considering TLD name choices. However, the lists identified reflect some of the challenges ICANN experienced in researching a reliable robust list. A review of the UN list published at <http://unstats.un.org/unsd/demographic/products/dyb/dyb2008/Table08.xls> reveals many inconsistencies. For example, areas of Australia have identified areas that are regions and not cities; there are many city names missing from Africa — Egypt has Cairo listed as the only city and many other cities are missing from Arab countries. The other suggested list at <http://www.citypopulation.de/> appears to be maintained by a private individual with no clear ongoing maintenance commitment and clear standard for rigour and impartiality.

In addition, this and other lists present additional problems:

Throughout the process of developing a framework for new gTLDs the Board has sought to ensure a combination of: clarity for applicants; appropriate safeguards for the benefit of the broader community; a clear, predictable and smooth running process. A considerable amount of time has been invested in working through the treatment of geographic names to ensure these objectives are met, and also addresses, to the extent possible, the expectations of the GAC and the community. It is felt that the current definition of geographic names contained in the Applicant Guidebook, combined with the community objection process, provides adequate safeguards for a range of geographic names while balancing these policy objectives.

Geographic names were discussed during the GNSO Policy Development Process, and the GNSO Reserved Names Working Group considered that the objection process was adequate to protect geographic names and did not find reason to further protect geographic names. The GAC expressed concerns that the GNSO proposals did not include provisions reflecting important elements of the GAC principles and did not agree

that the objection and dispute resolution procedures were adequate to address their concerns.

It is acknowledged in the Guidebook (and in correspondence and discussions with the GAC) that city names present challenges because city names may also be generic terms or brand names and, in many cases, no city name is unique. Unlike other types of geographic names defined in the Guidebook, there are no established lists that can be used as objective references in the evaluation process. This makes it impracticable or impossible for evaluators to effectively check whether applications for strings are city names and would exclude thousands of legitimate uses and applications. In addition, given that many of the names of cities are duplicated across the world, it would also be impracticable for the evaluators to determine which government or public authority is 'relevant' in the context of the rules of the Applicant Guidebook. Thus, all city names are not afforded the same types of protection as country and capital city names.

However, there are other mechanisms identified in the Guidebook, which could assist in addressing any disputes over a city name. For example, applicants are encouraged to identify potential sensitivities in advance and work with the relevant parties to mitigate concerns related to an application. There are also avenues available to governments to object to an application.

Applications will be posted for information and public comment. Governments may 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 applicants.

Governments may also provide a notification process 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.

In terms of submitting a formal objection to the application, the most appropriate mechanism is through the Community Objection process. Established institutions 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. The criteria for resolving the objection are provided in the Guidebook.

What protections are provided for city names that are in a contention set because they are confusingly similar with another applied for TLD?

There is no priority given to an application for a city name with documentation of support or non-objection of an application for a generic or brand name with the same name, if both are submitted as standard applications. However, the 'community' designation for applications was developed to view such applications more favorably if the applicant can prove, through the community priority evaluation procedure, that it represents a

defined community. Applicants intending to use the TLD primarily for purposes associated with the city name may apply as a 'community' application, understanding that additional criteria apply.

In responding to the example provided, that .pari or .berlin could easily drag a .paris or .berlin application into a contention set with a subsequent auction, and could become a target for blackmail. The application process has been developed to provide a number of safeguards to reduce the risk for gaming, and hopefully blackmail, as suggested in the example above. In addition to resolution through the contention set, which will be discussed below, there are other avenues also available to governments, such as:

- Governments may provide a notification using a notification procedure that will be defined or the public 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.
- 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 applicants.
- A formal objection could be made through the Community Objection process. Established institutions 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. The criteria for resolving the objection are provided in the Guidebook. ICANN does not wish to comment on the outcome of a speculative dispute.
- If the objection to .pari is not successful, this does not mean that .pari would prevail over .paris in a community priority evaluation procedure used for resolving string contention sets. However, as above, ICANN does not wish to comment on the outcome of such a dispute.

Has ICANN fostered the expectation that names associated with territorial jurisdictions are in fact public resources?

With respect to city names, these have not been provided any special treatment by ICANN in the past. These names have been freely available for registration in gTLDs

and ccTLDs all over the world. By contrast, country and territory names have been subject to protection at the second level of gTLDs since the approval of .INFO, which requires the approval of the relevant government before a country name can be released for use at the second level. All sTLD contracts from the 2004 round included language in the schedule of their agreements regarding reservation of geographic and geopolitical names at the second level of .info.

For example, the .ASIA agreement provides:

<http://www.icann.org/en/tlds/agreements/asia/appendix-6-06dec06.htm>

E. Geographic and Geopolitical Names. All geographic and geopolitical names contained in the ISO 3166-1 list from time to time shall initially be reserved at both the second level and at all other levels within the TLD at which the Registry Operator provides for registrations. All names shall be reserved both in English and in all related official languages as may be directed by ICANN or the GAC.

In addition, Registry Operator shall reserve names of territories, distinct geographic locations, and other geographic and geopolitical names as ICANN may direct from time to time. Such names shall be reserved from registration during any sunrise period, and shall be registered in ICANN's name prior to start-up and open registration in the TLD. Registry Operator shall post and maintain an updated listing of all such names on its website, which list shall be subject to change at ICANN's direction. Upon determination by ICANN of appropriate standards and qualifications for registration following input from interested parties in the Internet community, such names may be approved for registration to the appropriate authoritative body.

COMMONLY USED NAMES'

Why are “commonly used [geographic] names” not protected in the same manner as geographic names as defined in the Applicant Guidebook?

The comments suggest that, all “commonly used” geographic names might be protected. The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is a clear process for applicants, and appropriate safeguards for the benefit of the board community including governments. The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections geographic names well beyond those approved in the GNSO policy recommendations. These definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

In developing the process for geographic names, ICANN has relied upon ISO or UN lists to assist with geographical definitions in the context of new gTLDs. The combined

total of names currently protected in the new gTLD process is well in excess of 5000 names, and providing protection for “commonly used” interpretations of these names would multiply the number of names and the complexity of the process many-fold.

The ‘community’ designation for applications was developed to view such applications more favorably if the applicant can prove, through the community priority evaluation procedure, that it represents a defined community. Applicants intending to use the TLD primarily for purposes associated with a commonly used name for a region or country may apply as a ‘community’ application, understanding that additional criteria apply.

REGISTRY AGREEMENT

General

Consumer protection. ICANN does not protect consumers when considering registry contractual changes. With Vertical Integration even registrars would not be looking out for consumers anymore. *G. Kirikos (13 Nov. 2010).*

Criteria for Board refusal of an application (5.1). Specified criteria for Board refusal of an application should be clearly outlined so that potential applicants can make informed decisions about the likelihood that the Board may ultimately reject their respective applications. *MarkMonitor (Module 5, 7 Dec. 2010).*

Continuity of operations.

The AG’s requirement for 3 years operating expenses in either an irrevocable letter of credit or an irrevocable cash escrow deposit could tie up significant funds and hamper all new gTLD registries. ICANN Staff should be allowed to work with RySG to identify workable alternatives that don’t unduly burden new entrants but that also provide adequate resources for continuity purposes. *RySG (7 Dec. 2010). B. Fausett (9 Dec. 2010).*

New gTLD registry operators should not be forced into paying high fees and being captive properties of existing facilities based registries (who are their competitors) in order to be able to meet the continuity of operations requirement. This will not encourage the growth of facilities-based competition, diversity of capacity and independence, the sine qua non of diversity of content. Such applicants risk paying more in revenue points and policy manipulation to these service providers than the true value. The incremental cost to existing providers of providing continuity operations is close to zero. The AG should instruct such new gTLD applicants that they may form risk pool cooperatives and invent mutual insurance so that they can without capture by an existing back-end service provider write “guaranteed” in response to the continuity instrument question. *E. Brunner-Williams (9 Dec. 2010). Minds + Machines (10 Dec. 2010).*

The Board should allow TLD applicants to include a contract with a registry services operator as a qualification/substitute for the current Instrument or Letter of Credit for continued registry operations of the TLD. *DotGreen (9 Jan. 2011)*.

Competition issues (2.9 (b)). What will trigger referral of competition issues to competition authorities? How will the triggers be developed and by whom? *RySG (7 Dec. 2010)*

Cost Recovery for RSTEP (6.2). RySG repeats its previous comments that this provision should be reconsidered in light of the strongly negative effect it could have on innovation in the TLD space. *RySG (7 Dec. 2010)*

Vertical Integration (VI)

Key Points

- The Board’s decision to eliminate restrictions on vertical integration was the product of lengthy discussions and consultations detailed at <http://www.icann.org/en/minutes/draft-cross-ownership-rationale-04feb11-en.pdf>.
- ICANN will retain the express right to refer vertical integration issues to the appropriate completion authority and requires flexibility in the manner in which it makes such referrals.
- Previously established GNSO guidance with respect to new TLDs does not allow for differentiated treatment of “.brand” TLDs with respect to the non-discriminatory use of ICANN-accredited registrars.

Summary of Comments

The Board’s decision to eliminate cross ownership restrictions between registries and registrars makes sense and is timely. Those restrictions are artifacts of 1999 conditions and have no use short of an actual showing of market dominance by specific players. Elimination of artificial limitations of ownership and/or control is the only principled way forward for a number of reasons:

(1) Cross ownership restrictions would disproportionately discourage developing world gTLDs. Registrars now in the developing world are the obvious choices to start a new gTLDs. Cross ownership restrictions would prevent those registrars from starting a new gTLD, contrary to the sentiment of various sectors of the ICANN community that they wish to encourage developing-world gTLDs.

(2) Cross ownership restrictions can be circumvented, except by small and developing world registries that don’t have the resources and lawyers to “fine tune” their corporate structures to get around cumbersome rules. Richer and more devious players would find their way around the rules, leaving poorer, more honest companies to follow the rules to their detriment.

(3) A history of cross ownership restrictions is not a good reason to continue them, as recognized in the ICANN Board resolution.

- (4) Cross ownership restrictions could have left some gTLDs without a sales outlet. Nothing except elimination of vertical integration and cross ownership controls deals with the real problem of small registries who cannot find a registrar to carry their TLDs. The gTLDs with a special requirement (such as providing registration services in a little-spoken language) might not have been accommodated.
- (5) Competition authorities, not ICANN, are the proper mechanism to examine and control issues of market power and anticompetitive behavior.
- (6) The restrictions have not been shown to reduce consumer harms. If consumer harms and gaming issues arise in new gTLDs, then specific actions to prevent specific harms should be undertaken.
- (7) The restrictions would increase the chance of new gTLDs failing. The broad registrar channel is the wrong marketing method for specialty TLDs that need to appeal to their customers. Some new gTLDs will depend on providing and reinforcing their message on a registrar site and they are the best choice to create that registrar. An inability to target their market and provide end-to-end reinforcement of that message could seriously damage the prospects of that gTLD.
- (8) The restrictions would harm ICANN's credibility. Keeping anti-competitive restrictions from another era would inevitably have led to accusations that ICANN was trying to fix the economic landscape of new gTLDs. *Minds + Machines* (8 Dec. 2010). *Bayern Connect* (8 Dec. 2010). *Demand Media* (8 Dec. 2010). *AusRegistry* (9 Dec. 2010). *dotMusic* (10 Dec. 2010).

The Board decision to allow cross ownership was wise and will benefit the Internet community. *E. Pruis* (6 Jan. 2011).

Eligibility (1.2.1). IBM appreciates ICANN's decision to not create new rules prohibiting registrars from applying for or operating new gTLD registries. IBM supports the additional enforcement mechanisms added in lieu of the previously proposed restrictions on cross ownership. *IBM* (10 Dec. 2010).

Additional time for consideration of new VI approach. The Board's entirely new approach to Vertical Integration (the linchpin of which is a draft "Registry Operator Code of Conduct"—Specification 9 to the draft Registry Agreement) was first announced in a resolution adopted at an unscheduled Board meeting held seven days prior to the release of the proposed final AG. This initiative, floated in the proposed final AG, deserves much more than 28 days of review, discussion, and public comment before being adopted. To take just one example, section 1(c) of the Code of Conduct raises numerous issues regarding how it will be applied in specific instances (e.g., .brand TLDs) and how it will operate in conjunction with other policies such as those dealing with the warehousing of domain names. COA looks forward to a full discussion of the draft Registry Code of Conduct and of the Board's sudden reversal of its position on VI. COA questions if such a discussion will ever occur if the Board acts on the guidebook in Cartagena. This rushed process is no way to resolve intelligently such a complex and consequential issue. *COA* (3 Dec. 2010). *INTA* (8 Dec. 2010). *Hogan Lovells* (9 Dec. 2010). *Time Warner* (9 Dec. 2010). *IPC* (9 Dec. 2010). *P. Tattersfield* (10 Dec. 2010).

ICANN has failed to take into account the impact of the new VI decision on Registry Agreements.

ICANN has not indicated when and how it will refer a registry/registrar to a competition authority when abuse of power arises. ICANN has failed to fully develop and think through the requirements for Registry Agreements and should not now rush to consider the AG to be final as it will be the foundation for operation and compliance with respect to the expanded Internet. *INTA (8 Dec. 2010).*

The Board erred in the VI decision. *E. Brunner-Williams (16 Jan. 2011).*

Consumer protection. ICANN does not protect consumers when considering registry contractual changes. With Vertical Integration even registrars would not be looking out for consumers anymore. *G. Kirikos (13 Nov. 2010).*

Competition issues. There is a lack of any formal structure for determining when to make a referral to a competition authority. Given concerns about ICANN's lack of compliance resources, how will this be policed? *BBC (10 Dec. 2010).*

What will trigger referral of competition issues to competition authorities? How will the triggers be developed and by whom? *RySG (7 Dec. 2010)*

Existing registries. How will existing registries be able to participate in the opportunity for VI? What specific conditions and requirements would apply if an existing registry decides to transition to the new form of the agreement (and how will they be determined and by whom)? *RySG (7 Dec. 2010)*

.Brand TLDs.

Single registrant-single user domains enabled by the VI decision will simplify and hasten the ability of large brands to take advantage of the coming innovation. *Tucows (8 Dec. 2010).* *Bayern Connect (8 Dec. 2010).*

COA is acutely interested in the impact of the Board's new VI policy on so-called .brand TLDs. While there is no evident reason why TLD registries in this category should be barred from controlling their own accredited registrar, it is equally unclear why they should be barred from entering into exclusive arrangements with an independent accredited registrar; or from dispensing with accredited registrars altogether, and allocating second level domains as they see fit. The Board's VI decision addresses the first issue (though in an overbroad way, extending to every TLD registry of any description) but it leaves the other two unaddressed. *COA (3 Dec. 2010).*

While the Board eliminated VI restriction in this version of the guidebook, Module 5 still includes provisions that could unduly restrict how a single registrant TLD distributes and manages lower-level registrations that are entirely under their ownership and control. Changes should be made to remove those restrictions. *BC (6 Dec. 2010).*

This exception should be inserted: “A single registrant (‘dot brand’) Registry Operator must use an ICANN accredited registrar, but is not required to provide non-discriminatory access to all registrars where any name permitted for registration at the second level must be under the control of the Registry Operator or its affiliates.” The Registry Agreement should not unduly restrict single registrant TLDs from using only a wholly-owned or closely affiliated registrar to register and manage names that it controls (e.g., for divisions, product lines, locations, etc.) *BC (6 Dec. 2010)*.

Brand owners running a TLD for their own use should not be required to implement nondiscriminatory access to all ICANN accredited registrars. Brand TLDs should have complete control over which registrars can register a domain name in their zone. Section 2.9 of the draft registry agreement should clearly state that registries, through their ICANN-approved Registry-Registrar Agreement, are allowed to control access to their registries. *UrbanBrain (14 Jan. 2011)*.

RySG suggests lifting this requirement or at a minimum define for which purposes the domains could NOT be used if registered through an owned or closely affiliated registrar. The continued requirement to use a third party registrar for dot Brand TLDs could have the unintended effect of suppressing interest from the brand community towards applying for a brand TLD. *RySG (7 Dec. 2010)*.

Analysis of Comments

The history and evolution of the ICANN Board’s position on vertical integration is detailed in a draft rationale document posted at <<http://www.icann.org/en/minutes/draft-cross-ownership-rationale-04feb11-en.pdf>>. The Board has determined that there has been sufficient community discussion and expert analysis of vertical integration issues and has determined to move forward with eliminating vertical integration contractual barriers as unnecessary for the protection of consumers and the development of the expanded DNS marketplace.

ICANN recognizes that consolidation in the registry/registrar industries could raise competition issues. As such, ICANN has expressly retained the right to refer potential cross ownership arrangements to applicable competition authorities. ICANN requires flexibility in how and when it makes the decision to refer these matters to competition authorities. Specific criteria for such referrals are not appropriate in the registry agreement or the applicant guidebook. It is important to note that under current law in many jurisdictions any aggrieved third party may attempt to refer business arrangements to competition authorities for investigation of possible abuses, but the competition authority itself retains the power to act to remedy such abuses.

As indicated in the Board resolution on vertical integration on 5 November 2010 <<http://www.icann.org/en/minutes/resolutions-05nov10-en.htm>>, ICANN will allow existing registry operators to transition to the new form registry agreement that does not contain restrictions on vertical integration, subject only to any reasonable restrictions or conditions that may be necessary related to the legacy TLD.

Per Principle 19 set forth in the GNSO's Final Report – Introduction of New Generic Top-Level Domains, "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars." The GNSO report did not provide for different treatment for so called ".brand" TLDs. It would be inappropriate to include a provision in the registry agreement for new TLDs that is contrary to GNSO guidance on the new gTLD program.

Pricing

Key Points

- As previously described, price caps will not be implemented for new gTLDs but measures are instituted to prevent opportunistic behavior when registrations are renewed.
- The pricing provisions with respect to renewal registrations will be revised to address RySG concerns around temporary targeted marketing programs.
- The 10-year limitation of the term of registrations is intended to promote Whois accuracy and domain utilization.

Summary of Comments

Price Caps. ICANN continues to refuse price caps to protect consumers and will put the burden on governments to fix any future abuses of market power. *G. Kirikos (13 Nov. 2010).*

The pricing provisions for registry services should be removed. The AG contains notice requirements for price increases (30 days notice or initial registrations; 180 days notice for renewals). These rules would create a disparity between new TLD and existing TLD pricing policy and practices. ICANN's framework provides no basis for ICANN to dictate registry pricing policies and practices. ICANN has established that there will be no price caps for new TLD contracts and has decided to allow full VI of registries and registrars, absent market power and a determination by a competition authority in instances where market power may be a factor. *RySG (7 Dec. 2010).*

Pricing provisions should be revised to give registries flexibility in pricing and marketing. As currently written, section 2.10(b) would unduly restrict registries from engaging in seasonal and targeted marketing programs and/or responding to changes in market conditions with the potential effect of actually reducing registries' ability to compete on price. RySG recommends that the section be revised to allow registries to engage in marketing and promotional programs directed at encouraging renewal registrations in the same manner as section 2.10(a) would allow such programs for new registrations. *RySG (7 Dec. 2010)*

Renewals. We see no good reason why a renewal system should be obligatory for new gTLDs and urge the ICANN to adapt the AG to make innovations or at least the use of different proven systems in this field possible. This would mean making changes to the base agreement (2.10 pricing and specification 6, paragraphs 3 and 8, as specifically noted in SIDN's comments). To avoid any doubts for now and the future we suggest adding in the contract (art. 2.2. or Specification 1) that "Consensus policies specifically aimed at a system where Registry Operator offers domain name registrations for fixed periods of time are not applicable in the case where Registry Operator offers domain name registrations for an indefinite period of time with the possibility of termination." *SIDN (9 Dec. 2010).*

Registration term. The proposed Registry Agreement retains what appears to be a legacy provision restricting registries to offer registration terms of no more than 10 years. This limits opportunities for registrants, registries, registrars and back end providers, all of whom might benefit from greater flexibility. The registry and others in the chain should be permitted to offer alternative registration periods as long as they clearly and accurately describe their offerings. *W. Seltzer (10 Dec. 2010).*

Analysis of Comments

As detailed in previous comment analyses, after extensive discussions and expert consultation, the Board has determined that price caps are neither necessary nor appropriate for the new gTLD round. For additional background, please refer to <http://www.icann.org/en/announcements/announcement-06jun09-en.htm>.

As discussed with the RySG and other interested parties on the Temporary Drafting Group call on 27 January 2011, ICANN staff understands the concern with the restriction on differentiated pricing for renewals of registrations in new gTLDs and that they might discourage marketing programs and discounts that would be beneficial to registrants. The forthcoming draft of the registry agreement will be revised to attempt to alleviate these concerns with respect to targeted, short-term marketing programs. However, the exceptions will be drafted narrowly with the understanding that the purpose of the provision is to prevent abusive pricing practices with respect to registration renewals.

With respect to the limitation on the term of registrations of 10 years, this provision has been included in all of ICANN's gTLD registry agreements since 1999, and there does not appear to be any compelling reason to remove it. Requiring registrations to be renewed at least once every ten years has the beneficial effect of promoting Whois accuracy and domain utilization (by allowing domains to expire eventually if they are no longer used or no longer have accurate contact information). Also, potential income from future domain renewals could promote long-term registry financial stability and increase the chance that a successor operator would be willing to take over operation of a registry in the event of a registry operator's business failure.

Other Registry Operator Covenants

Key Points

- The proper forum for discussions regarding modifications to the UDRP is ICANN's GNSO, and extending new UDRP-related obligations to registries should be discussed in that context rather than through contractual obligations for new gTLD registry operators.
- The contractual compliance audit provisions will be revised to clarify that ICANN may conduct an audit regardless of whether or not Registry Operator has paid the costs and expenses of that audit.

Summary of Comments

Compliance with UDRP decisions. A Registry Operator's obligation to comply with UDRP decisions should be added to Section 5.4.1 and wherever else appropriate in the AG. Past instances of registrar noncompliance with UDRP decisions unfortunately suggest the advisability of this belt and suspenders approach in order to provide relief and ensure implementation of UDRP decisions, without resort to ICANN's overburdened compliance staff. *INTA (8 Dec. 2010)*

Auditing for Compliance (2.11).

Section 2.11 should provide that non-payment of registry fees shall not be a reason for ICANN to delay a registry audit that is otherwise called for. In situations where the Registry Operator must pay audit expenses, ICANN should ensure that delays in payment do not delay or undermine a compliance audit. The Board's decision to eliminate restrictions on cross ownership and VI will likely result in gTLD registry operators being affiliated with registrars. This will cause the TLD operator to pay the cost of audits of their own contractual and operational compliance. The BC is concerned that payments could be withheld or delayed in order to delay or distract auditors from compliance audit tasks. Contractual and operational compliance is ultimately the responsibility of ICANN, not the Registry Operator. ICANN may need to outsource audit services; the decision to outsource does not enable ICANN to escape accountability for non-compliance by its contracted Registry Operators. *BC (6 Dec. 2010).*

Analysis of Comments

The UDRP is ICANN's oldest consensus policy, dating to 1999. It imposes obligations only on registrars, not on registries. The proper forum for discussions regarding modifications to the UDRP is ICANN's GNSO, and extending new obligations to registries should be discussed in that context rather than through contractual obligations applicable only to new gTLD registry operators. Any alleged non-compliance by registrars with their obligations under the UDRP should be brought to the immediate attention of ICANN's contractual compliance and legal teams.

The provisions of Section 2.11 of the proposed registry agreement will be revised to clarify that the costs or expenses of any audit that are the responsibility of the Registry

Operator will be reimbursed to ICANN after the audit has been conducted. The initial costs will be paid by ICANN and no delay in the audit function will take place. See also the Analysis and Proposed Position with respect to the draft Registry Operator Code of Conduct below for additional clarification on the circumstances under which Registry Operator will be required to reimburse ICANN or the costs and expenses of compliance audits.

Termination

Key Points

- Changes consistent with the RySG's requested revisions to ICANN's termination right for bankruptcy related actions and certain criminal convictions will be made to the next version of the registry agreement.
- Terminations related to RPMs will be governed by the applicable RPM and it is not appropriate to require additional findings in order to initiate such a termination.
- If Registry Operator intends to continue its registry operation business in spite of an ICANN breach, it may pursue other remedies under the registry agreement in lieu of termination.

Summary of Comments

Bankruptcy related termination. Section 4.3(d) is problematic. The language should be changed at least as follows: "(iii) attachment, garnishment or similar proceedings are commenced against Registry Operator and represent a substantial threat to continued operation of the registry by the operator, and not dismissed within ... (60) days of their commencement." *RySG (7 Dec. 2010)*

Termination related to criminal convictions. ICANN can terminate the new gTLD Registry Agreement by conviction of an officer or Board member for financial activities with no clear opportunity to cure. These new grounds for termination are ill defined as they do not require knowledge or culpability on behalf of the operator, and do not require that the conduct relate to the registry business. The new gTLD Registry Agreement should provide an explicit opportunity to cure this basis for termination. This section should be revised with the language recommended by RySG in its comments. *RySG (7 Dec. 2010).*

Termination related to compliance with RPMs. This section should be revised to make it consistent with other termination provisions, as follows: "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, if an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such Section 2 of the Specification, and Registry Operator fails to comply with such

determination and cure such breach within (10) calendar days or such other time period as may be determined by the arbitrator or court.” *RySG (7 Dec. 2010)*

Termination related to failure to meet DNS DNSSEC SLAs based on new measurement methodologies. The language should be revised to state: “propagation will be initiated within 60 minutes” not “completed within 60 minutes.” *RySG (7 Dec. 2010).*

Termination by Registry Operator. RySG repeats the same concerns it raised in its AGv4 comments which were not addressed by ICANN: termination of the agreement by a registry for an ICANN breach that is not cured is not a very viable option and would leave various issues unresolved. Service level agreements should also be established for ICANN. *RySG (7 Dec. 2010)*

Automatic extension. Language should be added to allow for the automatic extension of a term if the Registry Operator and ICANN are negotiating a renewal in good faith. *RySG (7 Dec. 2010)*

Analysis of Comments

ICANN’s termination right with respect to bankruptcy related actions and convictions of officers or directors of Registry Operator of certain crimes will be revised in a manner consistent with the RySG’s comments.

ICANN’s termination right with respect to non-compliance with the RPMs set forth in Specification 7 was revised in the last version of the draft registry agreement to make clear that such termination right was subject to the rights of Registry Operator set forth in those RPMs. It would not be appropriate to require ICANN and the Registry Operator to comply with the enforcement and appeal mechanisms of each RPM and then to require ICANN to bring an arbitration claim and show violations of the RPM in order to enforce ICANN’s right to terminate the agreement. The procedures and mechanisms of each RPM are standalone provisions and so long as ICANN has complied with those procedures and mechanisms, if ICANN is permitted to terminate the registry agreement under a specific RPM, it is appropriate to allow it to do so without resorting to additional procedural dispute resolution mechanisms.

The thresholds for technical compliance set forth in Specification 6 are under ICANN and community review and will be revised in the next version of the registry agreement.

Registry Operator’s right to terminate the registry agreement in the event of an ICANN breach pursuant to Section 4.4 is intended to allow Registry Operator to exit the registry operation business in the event that it determines that its business is no longer viable as a result of the ICANN breach. If Registry Operator wishes to continue operating the registry in spite of ICANN’s breach, it may seek other remedies under the registry agreement, including damages and specific performance, through the dispute resolutions provisions provided in Article 5. Subjecting ICANN to service level

requirements is still open to discussion, but no concrete proposals have been put forward to date.

Given the long-term nature of each registry agreement and Registry Operator's ability to initiate extension negotiations with ICANN at any time, it would not be appropriate to allow for automatic extensions based on ongoing good faith negotiations. It is the responsibility of ICANN and the Registry Operator to negotiate extensions in a timely fashion.

Transition following Termination

Key Points

- In response to numerous comments, ICANN will include proposed language in the next draft of the registry agreement for community review and feedback that would provide for alternative transition arrangements for single-registrant/single-user gTLDs.

Summary of Comments

.Brand Termination. This exception should be inserted: "4.5 shall not apply to single-registrant ('dot brand') Registry Operators which own the intellectual property rights of the applied for TLD." Single registrant TLDs will be operated by entities whose IP rights survive any termination of their registry operating agreement with ICANN. Moreover, all second level domains would be under control of the TLD operator, who is in the sole position to determine whether interests of domain owners are better served by transition or outright termination of the gTLD. In situations where a single-registrant owns or controls all second level domains, an expiration or termination of the gTLD may lead to the closure of the gTLD or transfer to a new entity by a bankruptcy court or administrator instead of transition to a new operator. In these circumstances, the registry operator has reason to deny transition or transfer of registry data to a new operator designated by ICANN. Where ICANN transitions a single-registrant (dot brand) TLD to a new operator, IP rights of the original operator should not be conveyed to the new operator or to ICANN, as transferring registry data may reveal trade secrets to a third party, including customer lists. *BC (6 Dec. 2010)*.

Microsoft has appended Attachment A to its comments (proposed amendment to the Registry Agreement) to address its concerns that registry operators of .brand TLDs must have discretion to terminate operation of the .brand TLD registry without concern about ICANN's transition of the TLD to a third party, possibly a competitor. *Microsoft (9 Dec. 2010)*.

ICANN should remove transitions for .brands and adopt as mandatory the "wind down" proposal set forth in IPC's comments which will provide .brand registries with the ability to rationally exit registry activities without losing control of their brands and existing trademark rights. *IPC (9 Dec. 2010)*.

A .brandname/.companyname TLD should have a phase-out mechanism that would allow the registry to discontinue operations after a certain number of years. The details of such a phase-out period should be negotiated between ICANN and the brand TLD operator and be included in the final registry agreement with the brand holder.
UrbanBrain (14 Jan. 2011).

Analysis of Comments

ICANN recognizes that delegation of some ".brand" TLDs might not be necessary or appropriate in the event that the registry operator of such a TLD elected to voluntarily wind down the registry. The agreement affords discretion as to whether or not a TLD is re-delegated in order to protect registrants in the TLD and parties that might be negatively affected if a gTLD were to be inappropriately redelegated or not redelegated. While considerable effort has been devoted to developing a clear set of rules regarding when a TLD should be transferred and when a TLD should close, not have yet been found to be acceptable. For every potential set of rules developed, an exception or potential abuse has been found to render that rule set ineffective. Thus far, the only viable alternative is to provide this discretion to sunset in the registry agreement. ICANN and the community continue to work on options for a set of rules or to better convey the intent of the discretion. In the limited case of .brand and other TLDs that operate as single-registrant/single-user TLDs it would probably make sense to not force an outgoing operator to transition second-level registration data (since presumably the operator could just delete all the names as the registrant anyway and then there would be nothing to transition), and therefore ICANN will put forward proposed language for community review and feedback that would provide for alternative transition arrangements for single-registrant/single-user gTLDs.

Dispute Resolution

Key Points

- ICANN has previously accepted a compromise position on the use of arbitration panels.
- The ICC is an appropriate forum for registry agreement disputes.

Summary of Comments

Number of arbitrators. RySG applauds the allowance of additional arbitrators when exemplary or punitive damages or operational sanctions are being sought, but this should be extended to situations where the monetary relief sought exceeds \$1 million. Further as the decision to seek punitive or exemplary damages is solely within ICANN's control, fairness and due process considerations should provide that extending the hearing beyond a single day should not require both parties to agree. Either party should be able to request that the hearing be extended beyond a single day which

request the arbitrator must grant if reasonable. The provision's language should be revised as recommended in RySG's comments. *RySG (7 Dec. 2010)*

Forum for arbitration. Section 5.2 should be revised to allow the parties to decide the forum of arbitration. There is a potential conflict of interest using the International Chamber of Commerce (ICC) as ICC is an ICANN vendor for LPI and Community disputes. If there are concerns that the parties cannot agree on an arbitration forum, ICANN can propose a list of default arbitration forums which must include additional internationally recognized forums other than ICC, such as WIPO or CMAP. *IPC (9 Dec. 2010)*.

Analysis of Comments

After numerous rounds of comments and discussions, ICANN agreed to add the right to have arbitration heard before three arbitrators in the event that ICANN was seeking extraordinary remedies (i.e. punitive or exemplary damages or operational sanctions). Claims for monetary damages (even large claims) do not require multiple arbitrators to adjudicate and the additional expense associated with a multiple arbitrator panel is not justified in the event of such claims.

In response to comments, the arbitration provision will be revised to provide for an additional day to conduct a hearing in the event that the arbitrator(s) determines it to be necessary, either on its own determination or at the reasonable request of one of the parties.

The International Court of Arbitration of the International Chamber of Commerce is recognized as an objective and efficient arbiter of disputes in the international community. Disputes surrounding what forum to pursue an arbitration claim in would add needless additional complexity and expense to arbitration claims.

Fees

Key Points

- ICANN acknowledges that prospective registry operators would prefer not to have to pay for the cost of their registry service innovations. However, ICANN lacks the resources to absorb these costs.

Summary of Comments

Cost Recovery for RSTEP. RySG repeats its previous comments that this provision should be reconsidered in light of the strongly negative effect it could have on innovation in the TLD space. *RySG (7 Dec. 2010)*

Analysis of Comments

The cost for convening a Registry Service Technical Evaluation Panel will be the responsibility of the registry operator seeking to benefit from the proposed new service. It should be noted that such proposed new services are only referred to such panels if ICANN reasonably determines that the proposed new service might raise significant stability or security issues. Given the potential volume of new gTLDs and the multitude of potential services that could impact the security and stability of the DNS and the Internet, ICANN cannot agree to absorb this cost as there are not the resources available to do so. Alternatively, ICANN could raise fees in other areas but because there would not be a one-to-one match between effort and cost, the increase in fees would probably be set higher than necessary in order to mitigate risk. The current agreement provides the flexibility for ICANN to cover some of the RSEP costs in appropriate situations at its discretion. ICANN will seek to make the RSEP process as cost effective as possible. Also, ICANN is a not-for-profit and if registry fees and other sources for revenue cover these costs going forward, the direct RSEP fee may be eliminated. However, in the near term, the uncertainty of costs require that fees matching the RSTEP costs should be paid.

Definition of Security and Stability

Key Points

- The specific uses of the defined terms “Security” and “Stability” in the context of the registry agreement have been reviewed and found to be reasonably appropriate.
- The appropriate forum for altering the definitions is the Consensus Policy process.

Summary of Comments

RySG repeats and refers to its recommendations made in its AGv4 comments on changes to the definitions of security and stability, which were not made in the current AG. *RySG (7 Dec. 2010)*

Analysis of Comments

The specific uses of the defined terms “Security” and “Stability” in the context of the registry agreement have been reviewed and found to be reasonably appropriate.

The terms “Security” and “Stability” were defined in ICANN's Registry Services Evaluation Policy, and any change to their use in that context should be reviewed through the Consensus Policy process. The revised draft of the registry agreement will provide that the definitions may be amended and restated through the Consensus Policy process. As noted in response to earlier comments on this subject, the definitions are intentionally broad in order to take into account the security and stability of Internet systems outside of registries that rely on the stable and secure operations of registry

infrastructure. If there are any specific instances in the agreement where commenters believe the terms might be used inappropriately, commenters are invited to send specific suggested edits along with rationale for the proposed changes.

Change in Control of Registry Operator

Key Points

- Appropriate changes to the notice periods in the change in control provisions will be made in the next version of the registry agreement.

Summary of Comments

Notice periods. ICANN has 60 days to notify Registry Operator that it does not consent, while Registry Operator only has to give 30-day notice of a Change in Control or material sub-contracting arrangement. The last sentence of section 7.5 should be revised as RySG recommends in its comments (make the standard ICANN timeframe 30 days unless ICANN has requested additional information, which would provide ICANN with 60 days). RySG also refers ICANN to its previous AGv4 comments in which it made additional suggestions regarding section 7.5 for which there was no response or changes made by ICANN. *RySG (7 Dec. 2010)*

Analysis of Comments

ICANN will clarify the notice periods and timing requirements for ICANN review of change in control and material subcontracting arrangements in the next version of the registry agreement, consistent with the comments of the RySG.

Additional comments submitted by the RySG to this provision were addressed in the comment analysis of AGv4. The RySG has not provided any additional detail regarding potential legal violations that would require revisions to the language of this provision.

Escrow – Specification 2

Key Points

- The final RFC related to data escrow is in process and registry operators will be expected to comply with the RFC in force at the time of the execution of the registry agreement.
- An escrow agent that can demonstrate the capability to fulfill the technical and legal requirements of Specification 2 will generally be acceptable to ICANN.
- Escrow release triggers are intended to be broad for the protection of registrants.

Summary of Comments

Deposit Format. To RySG’s knowledge there is not and never has been a finalized RFC related to data escrow. What will be the required timeframe to update data escrow upon subsequent RFCs, assuming a final RFC is approved? Absent specific requirements there is likely to be a high variance across registries. *RySG (7 Dec. 2010)*

Extensions. This section is highly generic with little framework around what registry services require escrowing, leaving this open and subject to variances in application of the rule. *RySG (7 Dec. 2010)*

Processing of Deposit Files. These requirements may be difficult to integrate into a full end to end solution with the escrow agent. *RySG (7 Dec. 2010)*

Notification of Deposits. This will be an onerous process and seems redundant; if ICANN is being notified by the escrow provider of the deposit, then why does the registry operator need to do the same? What happens when the registry operator notifies of a submission and the escrow operator provides a conflicting report? How is the following to be implemented: “the Deposit has been inspected by Registry Operator and is complete and accurate”? Is a person expected to inspect it each day? *RySG (7 Dec. 2010)*

Escrow Agent. It seems odd that ICANN would not publish requirements for escrow agents to help streamline registry implementation timelines and make the process more efficient. What are the criteria that ICANN will use when determining whether an escrow agent is authorized to enter into an agreement? *RySG (7 Dec. 2010)*

Escrow data access. Registries’ experience has shown that deposits are subject to technical issues at the agent’s end, the registry end, or during the transmission. The language seems really aggressive in terms of allowing ICANN to access the escrow data given possible failure in transmission without much time for remediation or even mention of an issue with the escrow provider. *RySG (7 Dec. 2010)*

Analysis of Comments

There is no requirement to implement each of the draft RFCs with respect to data escrow. ICANN expects that the final RFC will be in place prior to the execution of registry agreements for new gTLDs. In the event that the final RFC is not in place, registry operators will be required to comply with the most recent draft of the RFC and will be required to implement changes within 180 days of the adoption of a new or revised RFC.

Data relating to all Registry Services (as defined in the registry agreement) is required to be escrowed. ICANN will work with the registry and escrow agent community to ensure that a full end-to-end solution is feasible.

An escrow agent that can demonstrate the capability to fulfill the technical and legal requirements of Specification 2 will generally be acceptable to ICANN. Specific

published requirements for escrow agents in addition to the requirements in the registry agreement are not necessary and may unduly limit the number of qualified escrow agents.

ICANN expects to receive reports from both the escrow agent and the registry operator. If there is a discrepancy in the reports, registry operator is expected to reconcile that discrepancy to ensure accurate escrow data. The method for inspecting the data is at the discretion of registry operator.

The escrow release triggers are intended to protect registrants in the TLD. ICANN will use its discretion in determining to require an escrow release in the event of immaterial transmission errors.

Whois – Specification 4

Key Points

- It has been determined that searchable Whois will not be a requirement of new gTLDs, but that additional points will be awarded during the application process for those prospective registry operators that wish to provide this service voluntarily.
- ICANN staff is committed to enforcing compliance with thick Whois requirements.
- Specific verification procedures could be specified by ICANN at the registrar level rather than the registry level and such procedures are subject to Consensus Policy development.
- It is ICANN's intention that the ZFA Plan will be expressly integrated into the registry agreement.

Summary of Comments

Fully Searchable Registry Whois. Revised criterion 26 invites confusion and misunderstanding. ICANN is inexplicably condemning the provisions it entered into with the 3 existing registries (.mobi, .asia, .post) and stipulating that while an applicant can receive “extra credit” in the application for offering fully searchable Whois, it only receives that credit if the facility is not open to all members of the public but only to those who qualify as “legitimate and authorized users,” apparently as defined by the registry. In effect this arrangement would penalize registries that choose to operate their Whois service as ICANN states is required by the .mobi, .asia or .post agreements. The real danger is that registries may lose sight of the fact that they are required to offer “plain vanilla” Whois service, fully compliant with Specifications 4 and 6, to all members of the public without imposing a gatekeeping function, and regardless of whether or not they also offer fully searchable Whois to a select group. ICANN should spell this out and also remove the provision under which a registry applicant forfeits its extra credit in this

area if it does what ICANN says 3 existing registries have been required (in some cases for the past 4 years) to do. *COA (3 Dec. 2010). IPC (9 Dec. 2010).*

Reinstate searchable Whois.

Because the removal of the requirement for searchable Whois hampers UDRP complainants' ability to show a pattern of bad faith registrations, MarkMonitor requests that the requirement for searchable Whois be reinstated. *MarkMonitor (Module 5, 7 Dec. 2010).*

ICANN should retain the requirement and reaffirm its past community-developed guidance on fully searchable thick Whois for the new gTLDs and eliminate the ambiguity in section 5.4.1. *INTA (8 Dec. 2010). IACC (9 Dec. 2010). Microsoft (9 Dec. 2010). BBC (10 Dec. 2010). RE/MAX (10 Dec. 2010).*

Whois compliance.

ICANN must also improve Whois compliance efforts to maximize value from searchable Whois. *Microsoft (9 Dec. 2010).*

Whois has been an area of grave concern and frustration especially in having inaccurate records in UDRP proceedings. ICANN's request for more comment on Whois is an empty gesture if ICANN does not take the comments into account and is not transparent about how it will process those comments and make some real changes in a new version of the guidebook. *CADNA (10 Dec. 2010).*

Whois privacy/proxy service rules. Whois privacy/proxy service rules should be regulated more strictly to ensure that mechanisms to reveal undisclosed information be implemented if particular circumstances so require. Currently, no specific rules exist on this issue. Many Registrars ensure the possibility to request the disclosure of the registered domain holder data, whenever these data have been concealed for privacy protection of individuals. This is achieved by filing an expressed and motivated request to that effect. The concerned Registrars reveal the registered domain holder information once they have verified that the petitioner has a legitimate reason for obtaining the data. This is a good approach to balancing the needs of trademark owners and privacy/proxy service providers and ICANN should work toward the achievement of this goal. *ECTA (28 October 2010) attachment to MARQUES/ECTA(10 Dec. 2010).*

Thick Whois Model. Telstra strongly supports a mandatory obligation for all new registries to provide Whois information under the thick Whois model, meaning that one Whois service stores the complete Whois information for all registrars. This information is essential for the transparent and effective operation of the URS in an environment of potentially hundreds of new gTLDs. *Telstra (23 Dec. 2010).*

Whois verification. We have proposed numerous times that all domain names be subject to Whois verification (i.e. mailed PIN codes to physical addresses of registrants) to curb abuse. ICANN ignored this proposal. This proposal would have the strong backing of the intellectual property constituencies as well as the support of most

legitimate domain name registrants. It should be a precondition to any new TLD expansion. *G. Kirikos (13 Nov. 2010). G. Kirikos (10 Dec. 2010).*

Registration Data Publication Services. Paragraph 2.1. provides that Registry Operators will make zone files available as per the ZFA plan. The contract provides a link to the ZFA Plan, which has not been finalized. Since the ZFA is an extra-contractual document that could be changed over time, and registry operators will be required to adhere to it, RySG wants assurance that changes to the ZFA will go through an appropriate process. Provision of zone files is a registry service, as mentioned in Specification 6 section 2, which normally would be subject to GNSO Consensus Policy process. *RySG (7 Dec. 2010)*

Analysis of Comments

The issue of searchable Whois was referred by ICANN to the ICANN Board Data Consumer Protection Working Group <<http://www.icann.org/en/committees/consumer-protection/>>. The DCP-WG's final report noted "The DCP-WG advises the Board that making searchable Whois mandatory is a policy matter that would have to be referred to the GNSO, but we accept it being optional as proposed in current version of the Applicant Guidebook. We flag that there are consumer and data protection issues that could be raised through a searchable Whois system."
<<http://www.icann.org/en/committees/consumer-protection/report-on-recommendations-07dec10-en.htm>>.

At its meeting in Cartagena, the ICANN Board adopted this recommendation and therefore searchable Whois will continue to be offered at the option of each registry rather than as a mandate applicable to all new registries. This is consistent with the current gTLD agreements, a few of which (.mobi, .asia, .post) do mention that searchable Whois will be offered. The provisions governing the searchable Whois requirements in each of the current registry agreements that provide for it were inserted voluntarily by the applicable registry as part of the negotiation process and were not required by ICANN. Those provisions all mention that the service would be offered "subject to applicable privacy policies," and therefore the guidebook's approach of taking into account privacy considerations is not inconsistent with current practice. ICANN will review the language of the agreement to ensure as requested by comments that it is clear that registries are required to offer "plain vanilla" Whois service, fully compliant with Specifications 4 and 6, to all members of the public without imposing a gatekeeping function, and regardless of whether or not they also offer fully searchable Whois to a select group.

ICANN compliance staff is committed to enforcing compliance with thick Whois requirements and will continue to explore ways to improve Whois record keeping practices. An ICANN operational readiness plan is on place for scaling to address the needs of an expanded marketplace.

Whois "verification" is the subject of Registrar Accreditation Agreement section 3.7.8, which provides that registrars will comply with any Consensus Policies established by ICANN "requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information." Any new Whois verification requirements for gTLDs should be discussed and approved through the GNSO. ICANN's approach in developing the new gTLD program has been to maintain the status quo on Whois to the extent possible, and to not make substantial changes to Whois requirements without the benefit of bottom-up policy development discussions.

It is ICANN's intention that the ZFA plan will be finalized prior to launch of new gTLDs via a collaborative process with relevant community members and the operative provisions of that plan will be inserted into Specification 4 and thus become a part of the registry agreement. The plan could then be amended through the agreed process available for amendments to the registry agreement itself.

Reserved Names – Specification 5

Key Points

- Use of "geonames" at the second level is expressly contrary to existing GAC advice regardless of the type of TLD attempting to register such names.
- Continuing discussions surrounding the allowance of single character labels and two-character IDN labels will be considered in the revised draft of Specification 5.
- ICANN relies on the ISO 3166-1 listing of country and territory names as an objective listing of appropriate restricted names.

Summary of Comments

.Brand TLDs. Brand TLDs should be allowed to avoid the requirement in Specification 5 that if they require use of a geoname (e.g. ".jp") at the second level they must first initially reserve names on the ISO 3166-1 list. Brand TLDs pose no threat to governments or geo-name abuses. *UrbanBrain (14 Jan. 2011)*.

An exception should be added for single registrant TLDs with respect to geographical names at the second level. Single registrant (dot brand) TLDs will reasonably want to create second level domains for their operating units or chapters in each country or region (e.g. Canada.canon or Haiti.RedCross). *BC (6 Dec. 2010)*.

Single character and two character IDN gTLDs. This specification contains no mention of ongoing discussions around single character gTLDs or allowance of two character IDN gTLDs at the second level. RySG recommends that this be corrected. *RySG (7 Dec. 2010)*

Sovereign status of Indian tribal governments. ICANN should include Indian tribal governments within the ISO 3166-1 listing of country and territory names which are granted special reservations and protection under Specification 5 of the guidebook. This is essential to ensure that tribal governments are able to operate without confusion over official government websites and the vital information that is provided on issues ranging from tribal elections, to emergency services, to tribal school and health facilities. The U.S. government list of federally recognized tribal governments, published on a regular basis, could serve as a starting point for protection of tribal names (see, e.g., Federal Register, Oct. 1, 2010, Vol. 75, No. 190, page 60810). Tribes have a unique status under the U.S. Constitution and numerous federal laws, treaties and federal court decisions and they need the same level of protection in the guidebook as what is afforded other countries and territories listed within ISO 3166-1. Only tribal government websites should be authorized to use a tribal name gTLD, unless express consent is granted by the tribal government. There are also strong intellectual/cultural property reasons to protect tribal names. Tribes have a strong interest in ensuring that their names are not used for inappropriate or exploitive purposes. Many tribes have limited resources and might be hard-pressed to find resources to withstand the stringent appeal process of the proposed guidebook. Their scarce resources are better used to support community programs and economic development. *National Congress of American Indians (11 Jan. 2011).*

Analysis of Comments

Based on advice from ICANN's Governmental Advisory Committee, registries will be prohibited from registering country and territory names at the second level in new gTLDs. These second-level names can be released using a “.info type” procedure. Further study and GAC consultation would be required before granting exceptions to this general prohibition for certain types of TLDs, including “.brand” TLDs. See fuller discussion in the Geographic Names discussion.

ICANN will review the wording of specification 5 with respect to whether or not single-character and two-character IDN labels should be reserved and will revise if appropriate to ensure clarity and to track agreed outcomes based on community discussions.

ICANN acknowledges that numerous groups would like to be afforded the same treatment in terms of registration restrictions as countries as territories that are included on the list of the ISO 3166 list. However, ICANN has relied since its founding on ISO 3166-1 as an objectively and externally developed list of country and territory names. ICANN prefers to rely on official published lists applicable on a global basis. Future changes to the schedule of reserved names could be developed through ICANN's GNSO.

Functional Specifications – Specification 6

Key Points

- ICANN technical staff is currently engaged in productive discussion with members of the registry community and other interested parties regarding revisions to the SLAs that will alleviate the concerns of the RySG.

Summary of Comments

EPP and RDPS SLAs measurement—because of problems with new plan, RySG requests a return to historical methods. If ICANN’s goal is to verify the functioning and general responsiveness of registry systems (as ICANN does now by pinging registrar Whois servers), there is no impediment to doing that separately, and outside the contractual framework. Further, RySG questions whether ICANN has the need or ability to meet all of the operational requirements for connecting to the registry SRS, including maintaining ACL certificates, login credentials, system updates, etc. *RySG (7 Dec. 2010). AFNIC (9 Dec. 2010).*

The impact of ICANN’s abandoning the existing model and going to a new plan as stated in the current AG version 5 (to build an SLA monitoring system) on this measurement is that registry performance reporting will be inconsistent between SLA performance that is visible to the registry and that which is visible to ICANN, and not accurate to actual performance. This could easily result in erroneous SLA violations and contract breach when a registry is actually operating in a fast and highly available fashion. Measurements under this new plan may yield highly variable results for any given registry depending upon network conditions and will yield higher numbers than currently seen in ICANN registry reports. The new system will disadvantage registry operators that are located farther from ICANN’s monitoring system, or are located in developing countries that do not have high bandwidth. While ICANN plans to publish the results publicly, the new system will offer no real consistency and no basis for comparison, making some registries look worse (or even non-compliant) than others without basis. The new measurement system would yield higher response time, but ICANN has not increased the DAG4 EPP and RDPS SLA metrics to compensate. RySG knows of no method to establish what thresholds might be reasonable under the proposed new system. *RySG (7 Dec. 2010)*

DNS update SLAs and DNSSEC impacts of new system. In the DNS update SLAs, ICANN has not provided any consideration for DNSSEC signing activity or considered SLA impacts related to DNSSEC operations at all. This SLA approach will likely discourage registries from deploying DNS servers in developing regions where SLA risks increase due to network latency or unavailability that is not under the control of the registry operator. *RySG (7 Dec. 2010)*

Penalties and new system. RySG does not see how ICANN can impose penalties for SLA violations (cancel registry contract, designate a successor operator, levy escalating penalties) when registries have no control over what is being measured or whether the violation is due to faulty monitoring, network latency or registry performance. *RySG (7 Dec. 2010)*

Standards Compliance—IDN. There is no guidance given regarding timelines in implementing new RFCs or updates in guidelines. *RySG (7 Dec. 2010)*

Emergency Thresholds.

Failure of one full escrow deposit is still a violation, and grounds for cancelling the registry contract and designating a successor operator. As RySG noted in its DAGv4 comments, such failures may not be the fault of the registry operator (e.g. problem on the escrow provider's system or an Internet transit issue). The contract should not hinge on one deposit. *RySG (7 Dec. 2010)*

The “Emergency Thresholds” now refers to the DNSSEC “proper resolution,” an undefined concept; RySG does not know what this threshold means. *RySG (7 Dec. 2010)*

Missing escrow deliveries are grounds for ICANN to cancel the registry contract. However, Specification 2, Part B, Sections 6.1-6.3 refer to the release of escrow deposits by the escrow agent. This makes the registry operator responsible for a failure by the escrow provider, over which the registry operator may have no control. RySG supports responsible and professional escrow management, but does not believe that the registry contract should be breachable by a party other than the registry operator. *RySG (7 Dec. 2010)*

Analysis of Comments

ICANN technical staff is currently engaged in productive discussions with members of the registry community and other interested parties regarding revisions to the SLAs in Specification 6 that are intended to alleviate the concerns of the RySG. The next draft of the registry agreement will contain revised thresholds and operational standards that are intended to balance the interests of the internet community and consumers in general in efficient and reliable registry operations and each registry operators' limited control over certain performance metrics.

Continuing Operations Instrument – Specification 8

Key Points

- To date, cash escrow accounts and letter of credit are considered by ICANN to be the only adequate protection against registry failure.
- ICANN welcomes additional detailed proposals on this topic from interested parties.

Summary of Comments

Current requirements too onerous. The AG's requirement for 3 years operating expenses in either an irrevocable letter of credit or an irrevocable cash escrow deposit could tie up significant funds and hamper all new gTLD registries. ICANN Staff should

be allowed to work with RySG to identify workable alternatives that don't unduly burden new entrants but that also provide adequate resources for continuity purposes. *RySG (7 Dec. 2010)*. *B. Fausett (9 Dec. 2010)*.

Back-end provider as alternative

The Board should allow TLD applicants to include a contract with a registry services operator as a qualification/substitute for the current Instrument or Letter of Credit for continued registry operations of the TLD. *DotGreen (9 Jan. 2011)*.

New gTLD registry operators should not be forced into paying high fees and being captive properties of existing facilities based registries (who are their competitors) in order to be able to meet the continuity of operations requirement. This will not encourage the growth of facilities-based competition, diversity of capacity and independence, the sine qua non of diversity of content. Such applicants risk paying more in revenue points and policy manipulation to these service providers than the true value. The incremental cost to existing providers of providing continuity operations is close to zero. The AG should instruct such new gTLD applicants that they may form risk pool cooperatives and invent mutual insurance so that they can without capture by an existing back-end service provider write "guaranteed" in response to the continuity instrument question. *E. Brunner-Williams (9 Dec. 2010)*. *Minds + Machines (10 Dec. 2010)*.

Analysis of Comments

After review of various alternatives, it was determined that cash escrows and letters of credit provide the only meaningful protection against abrupt registry failure and the resulting registrant harm. However, ICANN staff, through the Temporary Drafting Group and other venues, has sought input on viable alternatives. Contracts providing for back-end services in the event of registry failure may not be adequate as the back-end service provider may have no incentive to honor the contract if the registry fails and the registry operator ceases doing business, and ICANN lacks the resources to force compliance with such contracts in an efficient manner. Similarly, the use of a "risk pool cooperative" has not been developed in adequate detail to demonstrate how such a cooperative would work and how ICANN could ensure that the costs of temporarily continuing failed registries would be covered by the cooperative members, especially in the event that multiple members of the pool failed in a similar time frame.

With respect to the amount required to be secured in either a cash escrow or through a letter of credit, ICANN is considering initiating a request for proposals/information from back-end registry operators in order to determine the expected cost of maintaining critical registry functions for the relevant time periods. Assuming that consensus can be developed on the appropriate amounts, ICANN will provide additional guidance in the next draft of the applicable guidebook.

Code of Conduct – Specification 9

Key Points

- ICANN appreciates the detailed comments received on the Code of Conduct and will make appropriate edits to its provisions;
- The scope of the Code of Conduct will be refined to apply only to parties providing Registry Services but it cannot be expanded to non-contracting parties that have no existing relationship with Registry Operator;
- Certain prohibitions in the Code of Conduct will be relaxed in the event that the proposed conduct is not discriminatory and information that is disclosed is widely available;
- With respect to single-registrant (.brand) TLDs, ICANN will attempt to tailor to the code of conduct to provide flexibility to operators to the extent appropriate so long as the TLD is used by the registry operator solely for its own operations and registrations are not sold or made available to consumers or other third parties.

Summary of Comments

Support for Registry Code of Conduct in principle. IACC welcomes addition of the proposed code in principle but is concerned that its purportedly universal application to all prospective new gTLDs may prove unduly limiting (e.g. does paragraph 1 make equal sense for single user top level domain registries). IACC (9 Dec. 2010).

Registry Code of Conduct requires clarifications. Terms need to be defined, certain restrictions need adjustment (e.g., the prohibition against the registry registering domain names in its own right, the provisions about access to user data or proprietary information of a registrar utilized by or affiliated with the registrar, internal reviews). IPC (9 Dec. 2010).

Registry Code of Conduct is objectionable. The current draft of the Code is objectionable in at least two respects. First, it contains serious ambiguities that could: raise questions regarding marketing and promotional programs currently implemented by registries and registrars; potentially be a source of disputes between third parties and ICANN or registries/registrar; enable third parties to use ambiguities in the current draft of the Code to claim that ICANN is not properly enforcing fair or equitable conduct among registries and registrars, including that ICANN is breaching its obligations under registry agreements not to engage in arbitrary, unfair or inequitable conduct.

The following suggestions will decrease the uncertainties that the current draft would create:

The proposed Code should be clarified and its application narrowed to the designated new TLD in question. As currently proposed the Code applies to all registry operators, regardless of vertical integration (base agreement, section 2.14). Neither the proposed registry agreement nor the Code distinguish between practices with respect to the new TLD subject to that agreement and practices with respect to other TLDs or back-end

arrangements the operator may have (e.g. an existing gTLD), thus subject to different registry agreements. Thus, the proposed Code would have undue application to practices of registry operators with respect to other TLDs such as .info or .org whether or not vertical integration is permitted and without regard to the terms of applicable existing registry agreements. RySG (7 Dec. 2010).

The language of the draft registry agreement (base agreement v. 5, section 2.14) and the Code should be revised as specifically recommended in RySG's comments to deal with the problem that unlike provisions in existing registry agreements, the Code may not permit practices that vary among registrars in order to account for differences among them--e.g., section 1.a. ICANN has recognized the need to differentiate among parties so long as all parties are provided comparable opportunities. The draft Code shows no apparent recognition of ICANN's past principles in this regard and thus would be a source of uncertainty and could be competitively harmful. RySG (7 Dec. 2010).

Second, it allows discrimination in the sharing of data with related vertical parties. Limiting the sharing of "proprietary" or "confidential" data is illusory protection for other registries because the decision as to what to treat as "proprietary" or "confidential" data is voluntary and virtually without limit. Sections 3 and 4 should provide that the registry operator shall not permit the sharing of data from the registrar "unless that same data is reasonably available to all registries." In addition a new section 7 should be added: "7. Nothing set forth herein shall limit the ability of any Registry Operator or Registry Related Party, or subcontractor to enter into arms-length transactions in the ordinary course with a registrar with respect to products and services other than the Designated TLD." RySG (7 Dec. 2010)

Registry Code of Conduct—front running of domain names. 1.d should be revised to read as follows: "register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests for domain names not yet registered." Front-running is not defined in the guidebook but has been used to describe registrations based on contract parties' knowledge of user searches for available names. The Code of Conduct should restrict abuse of proprietary data to acquire unregistered names, whether that occurs as front-running or by other inappropriate methods. E.g., a registry has the unique visibility of nearly all traffic for non-existing records requested by resolvers. That means a registry can see all non-registered domain names that are typed (or mistyped) by users, indicating potential names to acquire for their own speculative or monetization purposes. BC (6 Dec. 2010).

Front running should be prohibited, but this restriction should not apply to single registrant TLDs. IPC (9 Dec. 2010).

Scope of the Code. Given the removal of VI and cross ownership of registries and registrars, the Code of Conduct should bind all registrars and resellers and incorporate the Registry Accreditation Agreement. IPC (9 Dec. 2010).

The provisions about registries bearing the cost of any audit of compliance with the VI Code of Conduct are unclear. Was it the intent to make vertically integrated registries pay for just the Code of Conduct costs of the audit? If so, the wording needs to be fixed. If not, then this is a disincentive to vertically integrate. It should be clarified that only those costs that relate to compliance with section 2.14 are to be automatically imposed on the registry operator. RySG (7 Dec. 2010).

.Brand TLDs. New item 4 should be inserted: “Nothing set forth in articles 1, 2, or 3 shall apply to a single-registrant (‘dot brand’) Registry Operator acting with respect to user data that is under its ownership and control, or with respect to conduct reasonably for the management, operations and purpose of the TLD.” The Code of Conduct should not restrict dot-brands from using an owned or closely affiliated registrar to register and manage names they control (e.g. for divisions, product lines, locations, customers, affiliates, etc.). BC (6 Dec. 2010).

Brand TLDs should be specifically exempted from Specification 9, Part 1, of the draft new gTLD agreement. UrbanBrain (14 Jan. 2011).

Single registrant gTLDs will certainly exhibit a preference for a particular registrar, and they will likely desire registration of domains based upon NXD data. There are many other special needs faced by single registrant branded gTLDs that are not accommodated by the Code of Conduct, contract and other elements of the gTLD program. The community should consider forming a special team to create gTLD program elements that support this important user group. MarkMonitor (Module 5, 7 Dec. 2010).

Community input on abuses/compliance. Before or during the application process, ICANN should seek community input on potential abuses (including lists developed by the VI and RAP working groups), detection data, the data needed to detect, and protection mechanisms/compliance methods. Community input should also be sought on punitive measures to ensure compliance. The Code of Conduct does not expose an exhaustive list of abuses, nor does it identify the data required to detect the abuses. It also does not expose the compliance mechanisms that will help protect registrants. BC (6 Dec. 2010).

Analysis of Comments

ICANN staff expressly sought and welcomes additional specific comments on the contents of the proposed Registry Operator Code of Conduct (the “Code”). Based on the comments received to date, ICANN proposes to revise the Code in the following manner:

- Section 1 will be modified to clarify that the Code only applies to the TLD that is the subject of the Registry Agreement to which the Code is attached.

- Section 1 will further be modified to clarify (i) that the Code of Conduct only applies to parties related to Registry Operator or bound by contract with Registry Operator that provide Registry Services (as defined in the Registry Agreement) with respect to the TLD and (ii) that the Code of Conduct only applies to Registry Operator's operation of the registry for the TLD and not to other unrelated businesses.
- Section 1(a) of the Code will be modified to allow for special treatment of registrars or resellers so long as the opportunity to qualify for comparable special treatment is available to all registrars or resellers on substantially similar terms.
- Section 1(b) of the Code will be eliminated as in response to comments indicating that it would raise difficult enforcement and interpretation questions, particularly in the case of single-registrant/.brand gTLDs.
- Section 1(c) of the Code will be eliminated as it is repetitive of Section 3.
- Section 1(d) of the Code will be expanded to capture a broader definition of "front running" as suggested in the public comments.
- Sections 3 and 4 will be incorporated into subsections of Section 1 and modified to allow for disclosure of user and registry data so long as such disclosures are generally available to all third-parties on substantially similar terms.
- A new Section will be added to clarify that the Code does not limit the ability of Registry Operator to enter into arms-length transactions in the ordinary course with any registrar or reseller with respect to products and services that are unrelated in all respects to the TLD.

The scope of the Code is intended to be broadly construed. Registry Operators are expected to enforce the Code with respect to controlled Affiliates and through contractual relationships with Registry Service providers. However, it is not possible to bind unaffiliated registrars and resellers specifically as they are not a party to the Registry Agreement.

If (i) a compliance audit pursuant to Section 2.11 is being conducted to ensure compliance with the Code and (ii) the Registry Operator is affiliated with a registrar or reseller, then the cost of such audit will be borne by Registry Operator. Registry operators that are not affiliated with a registrar or reseller will not be responsible for such costs unless otherwise provided in Section 2.11. Likewise, if Registry Operator is affiliated with a registrar or reseller but the audit relates to contractual compliance other than compliance with the Code, Registry Operator will not be responsible for the costs of the audit unless otherwise provided in Section 2.11.

Any of the foregoing revisions may be modified or rejected based on ongoing community discussions regarding the appropriate content and scope of the Code.

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