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Redacted

1 March 2016

Mr Akram Atallah,
President, Global Domains Division
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
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UNITED STATES OF AMERICA

Cc: Members of the ICANN Board

By e-mail to Akram.Attalah@icann.org

Dear Mr. Atallah,

Re: Data exposure issue

I am writing to you on behalf of Travel Reservations SRL ("TRS", formerly Despegar Online SRL) in response to your letter of 23 February 2016 in which you request evidence that Mr. Dirk Krischenowski is affiliated with HOTEL Top-Level-Domain sàrl ("HTLD") and information demonstrating that TRS was disadvantaged by the accessing of its confidential information.

My client appreciates that you are now addressing the issue.

The answer to your first question, the evidence of affiliation between Mr. Dirk Krischenowski and HTLD, can be found in three string confusion objections initiated by HTLD against applications by Despegar Online SRL and Booking.com. In these cases, HTLD was represented by Mr. Dirk Krischenowski of HTLD (Annexes 1 to 3). The evidence shows that Mr. Dirk Krischenowski is part of HTLD and has authority to represent HTLD.

To answer your second question, TRS has been severely impacted by the unauthorized access of its confidential information, regardless of the CPE result. The unauthorized access of this information is a clear illegal appropriation of trade secrets. These trade secrets contain sensitive business information that is now hold by HTLD. As you know, TRS applied for several hotel-related TLDs, including .hotel and .hoteles. HTLD is a competing applicant for .hotel . The fact that this competing applicant's representative repeatedly accessed confidential information on business plans, contingency planning, the estimated scale of the registry's technical operation, the technical infrastructure, etc. indicates that HTLD sought to obtain an unfair competitive advantage. If the .hotel TLD is delegated to HTLD, then TRS and HTLD would be competing in the same market of hotel-related TLDs. However, HTLD would have an unfair competitive

advantage because of its access to trade secrets it maliciously obtained. The damage resulting from such unfair competitive advantage can only be undone if HTLD is precluded from operating hotel-related TLDs.

*

I am confident that the above answers your questions and allows ICANN to take the only action that is appropriate given the circumstances, which is to cancel HTLD's application for .hotel.

Indeed, allowing for HTLD's application to proceed would go against everything that ICANN stands for. It would be the acquiescence in criminal acts that were committed with the obvious intent to obtain an unfair advantage over direct competitors. Such acquiescence would be contrary to ICANN's obligations under its Articles of Incorporation and Bylaws and to ICANN's mandate to operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and through open and transparent processes that enable competition and open entry in Internet-related markets. When the background screening criteria for new gTLD applicants were introduced, ICANN affirmed the right to deny an otherwise qualified application, recognizing ICANN's duty "*to protect the public interest in the allocation of critical Internet resources*" (gTLD Applicant Guidebook (v. 2012-06-04), Module 1-24). In this respect, ICANN made clear that "*applications from any entity with or including any individual [who] has ever been convicted of any crime involving the use of computers [...] or the Internet to facilitate the commission of crimes*" were going to be "*automatically disqualified from the program*" (gTLD Applicant Guidebook (v. 2012-06-04), Module, 1-22).

In the case at hand, ICANN caught a representative of HTLD stealing trade secrets of competing applicants via the use of computers and the Internet. The situation is even more critical as the crime was committed with the obvious intent of obtaining sensitive business information of a competing applicant. It is clearly not in the public interest, and the public interest will not be protected, if critical Internet resources are allocated to HTLD. Allocating the .hotel TLD to HTLD is not in accord with any of the core values that should guide the decisions and actions of ICANN. It would go against ICANN's mandate to act in conformity with, inter alia, open and transparent processes that enable competition and open entry in Internet-related markets.

In this respect, I must admit that your letter has come somewhat as a surprise. There should be no need for applicants to remind ICANN about its core obligations.

My initial request – on behalf of several applicants concerned – for the ICANN Board to take appropriate action on HTLD's application dates back to 5 June 2015. TRS substantiated the request further on 29 July 2015. Now, seven months later, you write that you finally are considering the issue. I understand from your letter, and from the assurance that was given by counsel to ICANN at the hearing of 9 December 2015 in the IRP on the CPEs regarding .hotel and .eco, that ICANN has abandoned the position that the ICANN Board has no duty to act on the issue. At said hearing counsel to ICANN confirmed that the matter was under consideration by the Board. However, although you were contacted on 5 June 2015, there are no indications that the Board gave consideration to the matter, either before or after said hearing. Our request was never put on the agenda of the Board, although there have been numerous Board meetings since. The questions you now raise in your letter of 23 February 2016 further show that ICANN has done nothing to consider the issue.

As a matter of fact, your request for evidence that Mr. Dirk Krischenowski is affiliated with HTLD shows that ICANN has not done a proper investigation into the matter. Annexes 1 to 3, which show this affiliation, are part of ICANN's own file on HTLD. The fact that you ask TRS to provide ICANN with this information shows that ICANN has not done any investigation and that you are not in a position to publish any investigation results.

In addition, it is unclear how your request for information that TRS was disadvantaged by the fraudulent actions of Dirk Krischenowski has any bearing on the matter, and the reference you make to the CPE is somewhat disturbing. The fact that HTLD may not have used the sensitive and confidential business plans and information it had stolen with respect to the CPE is irrelevant. As explained above, the result of the CPE has no bearing on the fact that it is inappropriate to allocate a critical Internet resource to a party that has been cheating.

Moreover, the outcome of the CPE on HTLD's application has been severely criticized. In its IRP Declaration of 11 February 2016, the IRP Panel recognized that SRL's criticism on the inconsistent outcomes of the CPE had merit, and decided "*there needs to be a system in place that ensures that marks are allocated on a consistent and predictable basis by different individual evaluators.*" The CPE result on HTLD's application was inconsistent, and marks were allocated in an inconsistent and unpredictable fashion. Given the serious concerns expressed by the IRP Panel, the inconsistent and erroneous CPE result on HTLD's application should not be upheld. A recent intervention of the ICANN Board (Annex 4) shows that ICANN can take all steps necessary to address inconsistent and/or unreasonable results of a process that apparently was subject to due process. I fail to see why ICANN is not taking similar steps in a CPE that was void of due process and consistency.

In view of the above, I reiterate the request that ICANN and its Board cancel the application of HTLD for .hotel at its meeting of 10 March 2016, failure of which I have the instruction to bring this matter to the attention of an IRP panel, in which case this correspondence will be made public without further notice.

This letter is not intended to be a complete statement of the elements of facts or law relevant to this matter and is sent without prejudice and reserving all rights.

Yours sincerely,

Flip Petillion

Flip Petillion

Annexes:

Annex 1: SCO Expert Determination in ICDR Case No. 50-504-T-00237-13
(https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-3-1-1016-75482-en.pdf)

Annex 2: SCO Expert Determination in ICDR Case No. 50-504-T-000211-13
(https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-3-1-1249-1940-en.pdf)

Annex 3: SCO Expert Determination in ICDR Case No. 50-504-T-000212-13
(https://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-3-1-1249-87712-en.pdf)

Annex 4: ICANN Board Resolutions 2016.02.03.12 – 2016.02.03.13
(https://www.icann.org/resources/board-material/resolutions-2016-02-03-en)

Annex 1.

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

New gTLD String Confusion Panel

Re: 50 504 T 00237 13

HOTEL TOP-LEVEL-DOMAIN
S.a.r.l, Objector

and

BOOKING.COM B.V., Applicant

String: <.HOTELS>

EXPERT DETERMIKNATION

The Parties

The Objector is HOTEL Top-Level-Domain S.a.r.l ("Objector") and is represented by Dirk Krischenowski of Objector.

The Applicant is Booking.com B.V. ("Applicant") and is represented by Flip Petillion of Crowell & Moring.

The New gTLD String Objected To

The new gTLD applied for and objected to is: <.HOTELS.>

Prevailing Party

The Applicant has prevailed, and the Objection is dismissed.

The New gTLD String Confusion Process

Module 3 of the ICANN Applicant Guidebook ("AGB") contains Objection Procedures and the new gTLD Dispute Resolution Procedures ("the Procedure").

Article 1(b) of the Procedure states that "The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person and 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."

As expressed in the AGB and the Procedure, there are four (4) grounds to object to the registration of new gTLDs. On of these grounds expressed String Confusion, as described in DRP Article 2(e)(i): **"(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."**

Article 3(a) states that "String Confusion Objections shall be determined by the International Centre for Dispute Resolution."

Procedural History of this Case

Applicant filed its Application for the string .HOTELS. Objector timely filed and served its String Confusion Objection dated March 13, 2013 with attachments Annex A1 through A5 ("Objection"). The Applicant timely filed and served its gTLD Response to String Confusion Objection dated May 16, 2013 with attachments 1 – 63 ("Response"). The International Centre for Dispute Resolution appointed the undersigned as expert (ICDR letter to parties, June 14, 2013).

Basis for Objector's Standing to Object based on String Confusion

Objector is an applicant for gTLD string .HOTEL. The applications by Applicant (for .HOTELS) and Objector (for .HOTEL) are not in the same contention set.

Parties' Contentions

The Objector (HOTEL Top-Level-Domain S.a.r.l) contends that registration of the applied-for string .HOTELS and its co-existence with .HOTEL would be confusing on multiple bases and would cause detriment and disruption. (Objection, Pars. 2b1-8, 3, 3a-b and e) It contends that the meaning of "hotel" and "hotels" is and is perceived as essentially identical notwithstanding that "hotels" is plural. It also contends that there is minimal acoustic difference between the words and that if registration were approved there would be potential for deceit and cybersquatting. Objector also states, in support of its objection on string confusion grounds, that others have filed community objections. Objector summarizes that co-existence of the two strings would likely deceive or cause confusion, that confusion would arise in the mind of the average reasonable internet user and consumer and that substantial detriment would arise therefrom. (Id., Par. 5)

The Applicant (Booking.com B.V.) contends that the Objection fails to meet the stringent burden to prove string confusion and asserts grounds beyond those subject to review by a string confusion panel, and that there is no likelihood of confusion between the strings. It contends that the strings are not confusingly similar, citing multiple comparisons including those using the String Similarity Assessment Tool. It also contends that the average internet user is used to small differences between TLDs, and that the strings are visually and aurally different and have different meanings. Applicant also contends that the claim of potential "detriment" as asserted by Objector is irrelevant to whether the strings are confusingly similar to each other. It concludes that "there is no risk of confusion in the mind of the average, reasonable Internet user, nor is such risk probable" and requests that the Objection be declared Unsuccessful.

Discussion and Findings

The parties agree that the standard or relevant criterion for a string objection panel, in ruling on a string objection, is set forth in Section 3.5.1 of the AGB:

> "A DRSP panel hearing a string confusion objection will consider whether the applied-for TLD 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."

> (Objection, Sec. 2a Standards; Response, Sec. VI A. Relevant Criterion)

The AGB and Procedure provide that in a string confusion objection proceeding the Objector bears the burden of proof. (AGB, Sec. 3.5: "The Objector bears the burden of proof in each case." Procedure, Article 20(c): "The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.")

Upon my review and consideration of the Objection, Response and attachments to each, the Objector has not sustained its burden of proof. I find insufficient factual and/or evidentiary, and no expert opinion, support for the Objection required to sustain Objector's burden of proof.

While it undisputed that the words "hotel" and "hotels" are similar, with only the addition of an "s" differentiating them visually, and one string may bring the other to mind, such "[m]ere association ... is insufficient to find a likelihood of confusion." (AGB, Sec. 3.5.1) 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." (Id., italics added) Objector has not sustained its burden of proof in

establishing the characteristics of the average, reasonable Internet user, nor that it is probable that such user is likely to be misled or confused.

I find persuasive the degrees of similarity or dissimilarity between the strings by use of the String Similarity Assessment Tool (Response, pp. 5-7), that ICANN did not put the applications for .HOTEL and .HOTELS in the same contention set (Id., p. 7), and the analysis and conclusions of the independent expert retained by Applicant (Id., pp. 9-10). I find the strings, of course while similar as noted above, to be sufficiently visually and aurally different for string confusion purposes.
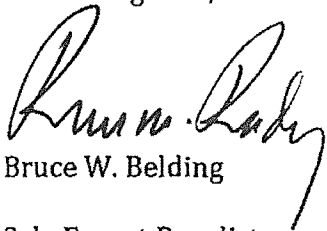
The parties' arguments and contentions regarding alleged business motives and/or attempts to limit competition, alleged detriments that could arise if .HOTELS is approved, and the existence of community objections by others are not addressed herein as they are deemed irrelevant to the task of the expert panel.

Based on the evidence and the parties' submissions, I find no likelihood of string confusion as defined in the AGB and do not find that that it would be probable that confusion would arise in the mind of the average, reasonable Internet user if the applied-for gTLD string is approved.

Determination

The Applicant has prevailed, and the Objection is dismissed.

Dated: August 8, 2013

Bruce W. Belding

Sole Expert Panelist

Annex 2.

Re: 50-504-T-000211-13

Hotel Top-Level-Domain S.a.r.l, OBJECTOR
   And
Despegar Online SRL, APPLICANT

String: <**.HOTELES**>

EXPERT DETERMINATION

The parties

The Objector is **Hotel Top-Level-Domain S.a.r.l,** 23, Boulevard Charles Marx, Luxembourg 2130, represented by Dirk Krischenowski.

The Applicant is **Despegar Online SRL,** Ruta 8 Kilometre 17,500, Synergia Building, Office 101, Zonameric, Montevideo 1600, Uruguay, represented by Joshua Bourne and Andres Patetta.

The New gTLD String Objected To

The new gTLD string applied for and objected to is: <**.HOTELES**>

Prevailing Party

The <u>Applicant</u> has prevailed and the Objection is <u>dismissed</u>.

The New gTLD String Confusion Process

Module 3 of the ICANN gTLD Applicant Guidebook contains Objection Procedures and the New gTLD Dispute Resolution Procedure ("the Procedure").

Article 1(b) of the Procedure states that "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."

As expressed in the Guidebook, and the Procedure, there are four (4) grounds to object to the registration of new gTLD strings. One of these grounds expressed String Confusion, as described in DRP Article 2(e)(i): **"(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."**

Article 3(a) states that "String Confusion Objections shall be administered by the International Centre for Dispute Resolution."

Procedural History of this Case

The Objection, dated March 13, 2013, was filed with the International Center for Dispute Resolution (the "ICDR") pursuant to the Procedure. The ICDR acknowledged receipt of the Objection by a letter dated March 18, 2013.

In accordance with Article 9 of the Procedure, on April 4, 2013, the ICDR notified the Objector that it had completed the review of the Objection and determined that the Objection was deficient, in that the Objector failed to furnish proof of service on Applicant. On April 11, 2013, following receipt of additional information from the Objector, the ICDR determined that the Objection now complied with the requirements of the Procedure and with requirements of the ICDR Supplementary Procedures for String Confusion Objections (Rules) (the "ICDR rules").

In accordance with Article 11(a) of the Procedure and Article 2, 3 of the ICDR rules, on April 17 2013, the ICDR formally notified the Applicant of the Objection. In accordance with Article 11(b) and relevant communications provisions of the Procedure, the Response, dated May 16, 2013, was timely filed with the ICDR. On May 22, 2013, the ICDR notified the parties that the Response complied with the requirements of the Procedure and the ICDR Rules and that it would proceed with the appointment of the expert panel.

The ICDR appointed Peter R. Day as the Panel in this matter on June 14, 2013, and the Panel was informed by an e-mail dated July 5, 2013, that the 45-day time limit for the Panel's Determination began to run on that date.

The Panel finds that it was properly constituted and is in compliance with the Procedure and the ICDR Rules.

Basis for Objector's Standing to Object based on String Confusion

Both the Objector and the Applicant have provided copies of the applications for their respective gTLD strings currently pending in the same application round and therefore the Objector has standing to pursue this objection under Section 3.2.2.1, Module 3 of the gTLD Guidebook.

Factual Background

a. Underlying Facts

The Objector is an applicant for the <.hotel> string.

As referred to in the Objection and the Response, in the current round there are a number of applications involving the word "hotel" and various plural forms of that word. The applications for the strings <.hotels> and <.hoteis> represent one of only two non-exact match contention sets created by the ICANN String Similarity Panel during the current round. <.Hotel> and <.hotels> have not been placed in a contention set by the String Similarity Panel.

b. Facts related to the Objector

The objector is seeking to use the <.hotel> string "to serve the global Hotel Community" and proposes to limit registrants to 1) Hotels, 2) Hotel chains, and 3) Hotel associations. Use of the <.hotel> string in this fashion has the goal of increasing the ability of the registrants to compete with third-party booking portals and increased direct bookings.

The objector also envisions better mobile device access, directory services, *etc.*, to enhance the ability of consumers to do direct booking. While the registry plans some restrictions of the use of the <.hotel> string, the overall goal is to provide increased competition and flexibility within the "Hotel community."

c. Facts related to the Applicant

According to the Response, the applicant is a branch of the largest online travel agency in Latin America. It is applying for five gTLD strings: <.Vuelos> and <.Hoteles> which target the Spanish-speaking market, <.Passagens> and <.Hoteis> which target the Portuguese speaking market, and <.Hotel> for the English-, Spanish- and Portuguese-speaking markets. The applicant has a four-stage plan for use of the <.Hoteles> gTLD string, beginning with a limited use for itself, its subsidiaries and affiliates. Further expansion will be based on testing and experience to determine to what extent use will expand to "travel companies, hotels, airlines, and other tourism organizations."

A major goal of the Applicant is to provide the Spanish-speaking community "a targeted namespace devoid of piracy, cybersquatting and other malicious activities."

Parties' Contentions

a. Objector

The fact that the Applicant has applied for the strings <.hotel>, <.hoteis> and <.hoteles> shows its belief that they are confusing. Further evidence of the likelihood of confusion is the possibility that Applicant could use the <.hoteles> string to redirect to existing <.com> domains.

Especially in the case of a word commonly used internationally such as "hotel," the plural of the word alone will raise confusion with the singular. The fact that the Applicant has sought registration of <.hotel> itself and multiple plurals suggests recognition by the Applicant of potential confusion.

There is an elaborate discussion of how the distinction between the singular and plural may be blurred depending on the usage and how this may lead to confusion between singular and plural as a TLD string, as well as the concept of invariance as opposed to similarity.

The Objector points out that English is a lingua franca on the Internet, which increases the likelihood for confusion with other plural forms, especially when non-native English speakers are using English on the Internet.

The Objector alleges that the acoustical similarity between "hotel" and "hoteles" could lead to confusion.

The Objector asserts that having seen a TLD string containing the word "hotel" it would be more difficult for an Internet user to memorize related plurals.

The Objector shows that in Google searches based on the Spanish language in Spain and Latin America "'HOTEL' is by far the most retrieved term, followed by the plural 'HOTELES' and/or 'HOTELS.'" (The Portuguese plural, "HOTEIS," appears in much smaller numbers.)

The Objector alleges that the public would suffer a material detriment since the Applicant might use proxy services and offers a number of letters submitted by international hotel organizations supporting the objection.

The Objector alleges that because of the similarities, people might "unwittingly" register domain names under the wrong TLD string, and the similar TLD strings would facilitate deceitful registrations.

The Objector also alleges that the degree of "confusability" would create new squatting opportunities.

The Objector further argues that the similar TLD strings would create a compulsion for multiple defensive registrations with the other TLD string.

The Objector also alleges that while it will offer the <.hotel> TLD string in the interest of the global hotel community, registrations by the Applicant would be more restrictive and lack "hotel community accountability."

The Objector argues that the <.hotel>/<.hoteles> case is not comparable to the <.eu>/<.eus>, <.com>/<.co>, or <.It>/<.it> cases but rather is like the <hotel.com/<hotels.com>/<hoteis.com> and <hotel.ce>/<hotels.de> cases in that "leading companies involved in hotel bookings" felt the need to register the singular and plural of "hotel" with the<.com> TLD. The Objector cites several WIPO cases to support this argument.

The Objector suggests that the very limited number of String Similarity Panel contention set decisions is understandable since there is no procedure through which a finding of the panel can be revised. Thus, in this case "the absence of a [String Similarity] Panel finding does not imply that the Panel deemed the risk of confusion to be smaller."

Finally, the Objector alleges that the competing registrations would "destroy rather than enhance competition and choice."

b. Applicant

The Applicant argues that the two gTLD strings in this case do not satisfy the narrow standard of paragraph 3.5.1 of the Guidebook defining string confusion.

The Applicant asserts that the Latin American Spanish-speaking market deserves its own TLD string and that users in that market deserve TLD strings in their own language. The Applicant cites from its application that "The intended future mission and purposed of .HOTELES is to serve as a trusted, hierarchical, and intuitive namespace … for a **Spanish-speaking audience**."

The Applicant presents the results of a Google searches using the Argentinian and Paraguayan search engines for the word "hoteles" showing the vast majority of the results displaying the Spanish term "hoteles" with far fewer "hotel" results. The Applicant also cites authority that confusion between two terms is less likely "when a term is encountered in an environment associated with the relevant culture of the particular language."

The Applicant argues that if the roles were reversed (*i.e.*, <.hoteles> were asserted against <.hotel>) the objection would clearly not be granted.

The Applicant also provides case citations supporting the proposition that "generic TLD strings are less important to Internet users than second-level domain strings." The Applicant argues that most Internet users are sophisticated enough to know the difference between words in different languages and provides examples of <.com> registrations of generic second-level domain names and the equivalent English plural.

The Applicant argues that trademark law, applied in several of the case citations provided by the Objector, does not apply in this case, which involves generic words.

The Applicant argues that detriment to an Objector or other parties is not a criterion to be considered in this case. It rejects the assertions of the hotel associations supporting the Objector and denies that registration of both TLD strings would foster excessive defensive registrations or deceit. The Applicant further argues that its administration of this TDL will be targeted to specific markets and will limit "piracy, cybersquatting, and other malicious activities."

Discussion and Findings

a. Burden of Proof

The Objector bears the burden of proof in each case, pursuant to Section 3.5, Module 3, gTLD Applicant Guidebook, Procedures, Section 20 (c).

b. Test for String Confusion Objection

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. [Module 3, New gTLD Applicant Guidebook]

2.2.1.1.3 Outcomes of the String Similarity Review
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. [Module 2, New gTLD Applicant Guidebook]

c. Findings

As referred to in the Objection and the Response, in the current round there are a number of applications involving the word "hotel" and various plural forms of that word. The applications for the strings <.hotels> and <.hoteis> represent one of only two non-exact match contention sets created by the ICANN String Similarity Panel during the current round. <.Hotel> and <.hotels> have not been placed in a contention set by the Panel, nor have the gTLD strings at issue in this case.

For the String Similarity Panel, the standard of review is almost identical to that for a DRSP panel, except for the addition of the word "visual." ("String confusion exists where a string so nearly resembles another **visually** that it is likely to deceive or cause confusion." Emphasis added.) The placing of the strings <.hotels> and <.hoteis> in a contention set by the ICANN String Similarity Panel seems to reflect this approach since the two words are the same length, and the letters "l" and "i" are sufficiently similar to cause confusion, especially when displayed on a computer or mobile device screen.

While both the Objector's and the Applicant's written pleadings articulately discuss a number of factors surrounding the assignment of gTLD strings, it is the Panel's opinion that the key elements in this determination are (1) resemblance, (2) probable confusion, and (3) a likelihood of confusion beyond that caused by mere association. And while the limitation to "visual" confusion is removed in the DRSP appeal process, nevertheless, unlike an objection based on legal rights, the Panel is of the opinion that the primary area for likely string confusion for a gTLD string is visual confusion.

It should be noted that there is nothing in the record to suggest that any trademark is involved in this case. Thus, since the WIPO cases cited by the Objector all involved well-established trademarks and the <.com> top-level domain name, they are of little relevance in this case.

Both parties have addressed the likelihood of misuse, possible effects on competition and possible increased need for defensive registrations. Again, under the gTLD Applicant Guidebook and the rules regarding disputes concerning string confusion, the Panel finds that these considerations are not directly germane to the determination required here.

While both parties have submitted computer search results with their pleadings, it is common knowledge that the "average, responsible Internet user" uses search engines for the purpose of finding products, services or reference information and the links thereto, and has the opportunity to refine, broaden or narrow the search parameters. Thus, it seems unlikely that somewhat similar but still distinct top-level domain names by themselves will affect Internet use, including searches, to the extent of causing user confusion.

Having reviewed the arguments by both parties, the Panel concludes that the Objector has not established the likelihood of probable confusion. The words "hotel" and "hoteles" are sufficiently different, both in length and visual appearance, that it cannot be considered as probable that an "average, responsible Internet user" would not recognize that they are different terms.
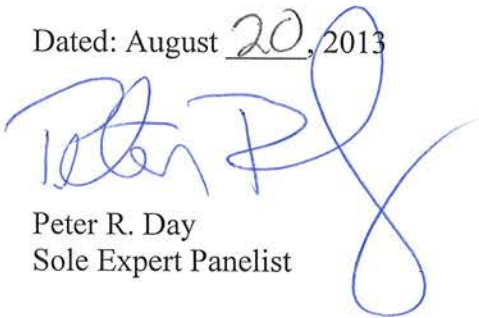
In addition, the fact that "hoteles" should be recognized by Spanish-speaking users (or users having a familiarity with Spanish) as a common Spanish word constitutes sufficient independent status as to render confusion even less likely, notwithstanding some association between the two words. Likewise, assuming the Objector's contention that English is a lingua franca on the internet, "hoteles" is not an English word and is unlikely to be considered at such.

Similarly, while there may be some aural similarity and similarity of meaning in a general sense with the words "hotel" and "hoteles," neither seems likely to be the basis for confusion for an "average, responsible Internet user."

d. Determination

Therefore the Applicant has prevailed and the Objection is dismissed.

Dated: August 20, 2013

Peter R. Day
Sole Expert Panelist

Annex 3.

Re: 50-504-T-000212-13

Hotel Top-Level-Domain S.a.r.l, OBJECTOR
   And
Despegar Online SRL, APPLICANT

String: <**.HOTEIS**>

EXPERT DETERMINATION

The parties

The Objector is **Hotel Top-Level-Domain S.a.r.l**, 23, Boulevard Charles Marx, Luxembourg 2130, represented by Dirk Krischenowski.

The Applicant is **Despegar Online SRL**, Ruta 8 Kilometre 17,500, Synergia Building, Office 101, Zonameric, Montevideo 1600, Uruguay, represented by Joshua Bourne, Steven M. Levy and Andres Patetta.

The New gTLD String Objected To

The new gTLD string applied for and objected to is: <**.HOTEIS**>

Prevailing Party

The <u>Applicant</u> has prevailed and the Objection is <u>dismissed</u>.

The New gTLD String Confusion Process

Module 3 of the ICANN gTLD Applicant Guidebook contains Objection Procedures and the New gTLD Dispute Resolution Procedure ("the Procedure").

Article 1(b) of the Procedure states that "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."

As expressed in the Guidebook, and the Procedure, there are four (4) grounds to object to the registration of new gTLD strings. One of these grounds expressed String Confusion, as described in DRP Article 2(e)(i): "**(i) 'String Confusion Objection' refers to the objection that the string**

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comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications."

Article 3(a) states that "String Confusion Objections shall be administered by the International Centre for Dispute Resolution."

Procedural History of this Case

The Objection, dated March 13, 2013, was filed with the International Center for Dispute Resolution (the "ICDR") pursuant to the Procedure. The ICDR acknowledged receipt of the Objection by a letter dated March 18, 2013.

In accordance with Article 9 of the Procedure, on April 4, 2013, the ICDR notified the Objector that it had completed the review of the Objection and determined that the Objection was deficient, in that the Objector failed to furnish proof of service on Applicant. On April 11, 2013, following receipt of additional information from the Objector, the ICDR determined that the Objection now complied with the requirements of the Procedure and with requirements of the ICDR Supplementary Procedures for String Confusion Objections (Rules) (the "ICDR rules").

In accordance with Article 11(a) of the Procedure and Article 2, 3 of the ICDR rules, on April 17 2013, the ICDR formally notified the Applicant of the Objection. In accordance with Article 11(b) and relevant communications provisions of the Procedure, the Response, dated May 16, 2013, was timely filed with the ICDR. On May 22, 2013, the ICDR notified the parties that the Response complied with the requirements of the Procedure and the ICDR Rules and that it would proceed with the appointment of the expert panel.

The ICDR appointed Peter R. Day as the Panel in this matter on June 14, 2013, and the Panel was informed by an e-mail dated July 5, 2013, that the 45-day time limit for the Panel's Determination began to run on that date.

The Panel finds that it was properly constituted and is in compliance with the Procedure and the ICDR Rules.

Basis for Objector's Standing to Object based on String Confusion

Both the Objector and the Applicant have provided copies of the applications for their respective gTLD strings currently pending in the same application round and therefore the Objector has standing to pursue this objection under Section 3.2.2.1, Module 3 of the gTLD Guidebook.

Factual Background

a. Underlying Facts

The Objector is an applicant for the <.hotel> string.

As referred to in the Objection and the Response, in the current round there are a number of applications involving the word "hotel" and various plural forms of that word. The applications for the strings <.hotels> and <.hoteis> represent one of only two non-exact match contention sets created by

the ICANN String Similarity Panel during the current round. <.Hotel> and <.hotels> have not been placed in a contention set by the String Similarity Panel.

b. Facts related to the Objector

The objector is seeking to use the <.hotel> string "to serve the global Hotel Community" and proposes to limit registrants to 1) Hotels, 2) Hotel chains, and 3) Hotel associations. Use of the <.hotel> string in this fashion has the goal of increasing the ability of the registrants to compete with third-party booking portals and increased direct bookings.

The objector also envisions better mobile device access, directory services, *etc.*, to enhance the ability of consumers to do direct booking. While the registry plans some restrictions of the use of the <.hotel> string, the overall goal is to provide increased competition and flexibility within the "Hotel community."

c. Facts related to the Applicant

According to the Response, the applicant is a branch of the largest online travel agency in Latin America. It is applying for five gTLD strings: <.Vuelos> and <.Hoteles> which target the Spanish-speaking market, <.Passagens> and <.Hoteis> which target the Portuguese speaking market, and <.Hotel> for the English-, Spanish- and Portuguese-speaking markets. The applicant has a four-stage plan for use of the <.Hoteis> gTLD string, beginning with a limited use for itself, its subsidiaries and affiliates. Further expansion will be based on testing and experience to determine to what extent use will expand to "travel companies, hotels, airlines, and other tourism organizations."

A major goal of the Applicant is to provide the Portuguese-speaking community "a domain name safe from piracy, cybersquatting and other malicious activities."

Parties' Contentions

a. Objector

The fact that the Applicant has applied for the strings <.hotel>, <.hoteis> and <.hoteles> shows its belief that they are confusing. Further evidence of the likelihood of confusion is the possibility that Applicant could use the <.hoteis> string to redirect to existing <.com> domains.

Especially in the case of a word commonly used internationally such as "hotel," the plural of the word alone will raise confusion with the singular. The fact that the Applicant has sought registration of <.hotel> itself and multiple plurals suggests recognition by the Applicant of potential confusion.

There is an elaborate discussion of how the distinction between the singular and plural may be blurred depending on the usage and how this may lead to confusion between singular and plural as a TLD string, as well as the concept of invariance as opposed to similarity.

The Objector points out that English is a lingua franca on the Internet, which increases the likelihood for confusion with other plural forms, especially when non-native English speakers are using English on the Internet.

The Objector alleges that the acoustical similarity between "hotel" and "hoteis" could lead to confusion.

The Objector asserts that having seen a TLD string containing the word "hotel" it would be more difficult for an Internet user to memorize related plurals.

The Objector points out that Google searches for the word "hotel" or its plurals in several languages will yield large numbers of "hits" of multiple versions of the word. (Although the terms "hotel" and "hotels" yield the largest number of results, the results for the Spanish and Portuguese plurals are still relatively large numbers.)

The Objector alleges that the public would suffer a material detriment since the Applicant might use proxy services and offers a number of letters submitted by international hotel organizations supporting the objection.

The Objector alleges that because of the similarities, people might "unwittingly" register domain names under the wrong TLD string, and the similar TLD strings would facilitate deceitful registrations.

The Objector also alleges that the degree of "confusability" would create new squatting opportunities.

The Objector further argues that the similar TLD strings would create a compulsion for multiple defensive registrations with the other TLD string.

The Objector also alleges that while it will offer the <.hotel> TLD string in the interest of the global hotel community, registration by the Applicant would be more restrictive and lack "hotel community accountability."

The Objector argues that the <.hotel>/<.hoteis> case is not comparable to the <.eu>/<.eus>, <.com>/<.co>, or <.It>/<.it> cases but rather is like the <hotel.com/<hotels.com>/<hoteis.com> and <hotel.ce>/<hotels.de> cases in that "leading companies involved in hotel bookings" felt the need to register the singular and plural of "hotel" with the<.com> TLD. The Objector further cites several WIPO cases to support this argument.

The Objector suggests that the very limited number of String Similarity Panel contention set decisions is understandable since there is no procedure through which a finding of the panel can be revised. Thus, in this case "the absence of a [String Similarity] Panel finding does not imply that the Panel deemed the risk of confusion to be smaller."

Finally, the Objector alleges that the competing registrations would "destroy rather than enhance competition and choice."

b. <u>Applicant</u>

The Applicant argues that the two gTLD strings in this case do not satisfy the narrow standard of paragraph 3.5.1 of the Guidebook defining string confusion.

The Applicant asserts that the Latin American Portuguese-speaking market deserves its own TLD string and that users in those markets deserve TLD strings in their own language. The Applicant

asserts that its use of the <.hoteis> string will be aimed at that market only and presents the results of a Google search in Brazil for the word "hoteis" showing the vast majority of the results display the Portuguese word "hoteis." The Applicant also cites authority that confusion between two terms is less likely "when a term is encountered in an environment associated with the relevant culture of the particular language."

The Applicant argues that if the roles were reversed (*i.e.*, <.hoteis> were asserted against <.hotel>) the objection would clearly not be granted.

The Applicant also provides case citations supporting the proposition that "generic TLD strings are less important to Internet users than second-level domain strings." The Applicant argues that most Internet users are sophisticated enough to know the difference between words in different languages and provides examples of <.com> registrations of generic second-level domain names and the equivalent English plural.

The Applicant argues that trademark law, applied in several of the case citations provided by the Objector, does not apply in this case, which involves generic words.

The Applicant argues that detriment to an Objector or other parties is not a criterion to be considered in this case. It rejects the assertions of the hotel associations supporting the Objector and denies that registration of both TLD strings would foster excessive defensive registrations or deceit. The Applicant further argues that its administration of this TDL will be targeted to specific markets and will limit "piracy, cybersquatting, and other malicious activities."

Discussion and Findings

a. Burden of Proof

The Objector bears the burden of proof in each case, pursuant to Section 3.5, Module 3, gTLD Applicant Guidebook, Procedures, Section 20 (c).

b. Test for String Confusion Objection

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. [Module 3, New gTLD Applicant Guidebook]

2.2.1.1.3 Outcomes of the String Similarity Review
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. [Module 2, New gTLD Applicant Guidebook]

c. Findings

As referred to in the Objection and the Response, in the current round there are a number of applications involving the word "hotel" and various plural forms of that word. The applications for the strings <.hotels> and <.hoteis> represent one of only two non-exact match contention sets created by the ICANN String Similarity Panel during the current round. <.Hotel> and <.hotels> have not been placed in a contention set by the Panel, nor have the gTLD strings at issue in this case.

For the String Similarity Panel, the standard of review is almost identical to that for a DRSP panel, except for the addition of the word "visual." ("String confusion exists where a string so nearly resembles another **visually** that it is likely to deceive or cause confusion." Emphasis added.) The placing of the strings <.hotels> and <.hoteis> in a contention set by the ICANN String Similarity Panel seems to reflect this approach since the two words are the same length, and the letters "l" and "i" are sufficiently similar to cause confusion, especially when displayed on a computer or mobile device screen.

While both the Objector's and the Applicant's written pleadings articulately discuss a number of factors surrounding the assignment of gTLD strings, it is the Panel's opinion that the key elements in this determination are (1) resemblance, (2) probable confusion, and (3) a likelihood of confusion beyond that caused by mere association. And while the limitation to "visual" confusion is removed in the DRSP appeal process, nevertheless, unlike an objection based on legal rights, the Panel is of the opinion that the primary area for likely string confusion for a gTLD string is visual confusion.

It should be noted that there is nothing in the record to suggest that any trademark is involved in this case. Thus, since the WIPO cases cited by the Objector all involved well-established trademarks and the <.com> top-level domain name, they are of little relevance in this case.

Both parties have addressed the likelihood of misuse, possible effects on competition and possible increased need for defensive registrations. Again, under the gTLD Applicant Guidebook and the rules regarding disputes concerning string confusion, the Panel finds that these considerations are not directly germane to the determination required here.

While both parties have submitted computer search results with their pleadings, it is common knowledge that the "average, responsible Internet user" uses search engines for the purpose of finding products, services or reference information and the links thereto, and has the opportunity to refine, broaden or narrow the search parameters. Thus, it seems unlikely that somewhat similar but still distinct top-level domain names by themselves will affect Internet use, including searches, to the extent of causing user confusion.

Having reviewed the arguments by both parties, the Panel concludes that the Objector has not established the likelihood of probable confusion. The words "hotel" and "hoteis" are sufficiently different, both in length and visual appearance, that it cannot be considered as probable that an "average, responsible Internet user" would not recognize that they are different terms.
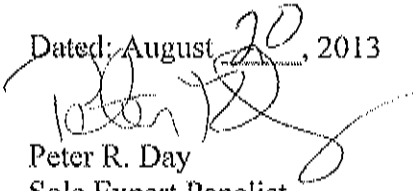
In addition, the fact that "hoteis" should be recognized by Portuguese-speaking users (or users having a familiarity with Portuguese) as a common Portuguese word constitutes sufficient independent status as to render confusion even less likely, notwithstanding some association between the two words. Likewise, assuming the Objector's contention that English is a lingua franca on the internet, "hoteis" is not an English word and is unlikely to be considered at such.

Similarly, while there may be some aural similarity and similarity of meaning in a general sense with the words "hotel" and "hoteis," neither seems likely to be the basis for confusion for an "average, responsible Internet user."

d. <u>Determination</u>

Therefore, the Applicant has prevailed and the Objection is dismissed.

Dated: August 20, 2013

Peter R. Day
Sole Expert Panelist

Annex 4.

Log In (/users/sign_in)   Sign Up (/users/sign_up)

Search ICANN.org   Q

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G_T START_D (/G_T START_D)   N_WS & M_D_A (/N_WS)   O_CY (/_O_CY)   _UB_C COMM_NT (/_UB_C COMM_NTS)

RESOURCES (/RESOURCES)   COMMUN_TY (/COMMUN_TY)   ANA_ST_WARDSH_
& ACCOUNTAB_TY (/ST_WARDSH_ACCOUNTAB_TY)

Approved Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

03 Feb 2016

1. **Consent Agenda:**
   a. **Approval of Board Meeting Minutes**

   b. **RSSAC (Root Server System Advisory Committee) Co-Chair Appointments**
      Rationale for Resolution 2016.02.03.03

   c. **Redelegation of the .TG domain representing Togo to the Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P)**
      Rationale for Resolutions 2016.02.03.04 – 2016.02.03.05

   d. **Delegation of the .ею ("eu") domain representing the European Union in Cyrillic script to EURid vzw/asbl**
      Rationale for Resolutions 2016.02.03.06 – 2016.02.03.07

   e. **Delegation of the .澳門 ("Macao") domain representing Macao in Traditional Chinese script to the Bureau of Telecommunications Regulation (DSRT)**
      Rationale for Resolutions 2016.02.03.08 – 2016.02.03.09

2. **Main Agenda:**
   a. **Consideration of Independent Review Process Panel's Final Declaration in *Merck KGaA v. ICANN (Internet Corporation for Assigned Names and Numbers)***
      Rationale for Resolution 2016.02.03.10

   b. **Reconsideration Requests 15-19 (the ICANN (Internet Corporation for Assigned Names and Numbers) Business Constituency & the ICANN (Internet Corporation for Assigned Names and Numbers) Noncommercial Stakeholder Group (NCSG (Non-Commercial Stakeholders Group))) and 15-20 (The Internet Commerce Association)**
      Rationale for Resolution 2016.02.03.11

   c. **Consideration of Expert Determination Re: Objection to Application for .HOSPITAL**
      Rationale for Resolutions 2016.02.03.12 – 2016.02.03.13

   d. **Ombudsman Report Regarding Complaint by Hu Yi Global Information Resources (applicant for .招聘 ("recruitment" in Chinese))**
      Rationale for Resolution 2016.02.03.14

   e. **GAC (Governmental Advisory Committee) Advice: Dublin Communiqué (October 2015)**
      Rationale for Resolution 2016.02.03.15

   f. **Board Governance Committee Recommendation Regarding Implementation of Public Interest Commitments for .DOCTOR Registry Agreement**
      Rationale for Resolution 2016.02.03.16

   g. **Establishing a Set of KPIs for Board Performance and Improvement Efforts (ATRT2 Rec. 1, 2 & 3)**
      Rationale for Resolutions 2016.02.03.17 – 2016.02.03.18

h. **USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding**
   Rationale for Resolution 2016.02.03.19

3. **Executive Session – CONFIDENTIAL**
   a. **President and CEO FY16 SR1 At-Risk Compensation**
      Rationale for Resolution 2016.02.03.20

   [Published on 5 February 2016]

   b. **Election of Göran Marby as ICANN (Internet Corporation for Assigned Names and Numbers)'s President and CEO (Published on 11 February 2016)**

1. Consent Agenda:

   a. Approva of Board Meet ng M nutes

      Resolved (2016.02.03.01), the Board approves the minutes of the 21 October, 22 October and 2 December 2015 Meetings of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

      Resolved (2016.02.03.02), the Board approves the minutes of the 18 October New gTLD (generic Top Level Domain) Program Committee (NGPC) Meeting.

   b. RSSAC (Root Server System Adv sory Comm ttee) Co-Cha r Appo ntments

      Whereas, Article XI, Section 2 of the Bylaws governs the Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)).

      Whereas, Article XI, Section 2, Subsection 3B of the Bylaws states that the Board of Directors shall appoint the co-chairs and the members of the RSSAC (Root Server System Advisory Committee).

      Whereas, on 3 December 2015, the RSSAC (Root Server System Advisory Committee) conducted an election for one co-chair position and elected Brad Verd (Verisign, A/J-Root Server Operator) to a two-year term as co-chair.

      Whereas, Tripti Sinha (University of Maryland, D-Root Server Operator) will continue to serve as co-chair for the second year of a two-year term.

      Resolved (2016.02.03.03), the Board of Directors accepts the recommendation of the RSSAC (Root Server System Advisory Committee) and appoints Tripti Sinha and Brad Verd as co-chairs of RSSAC (Root Server System Advisory Committee) and extends its best wishes to Tripti and Brad in their important new roles.

      Rationale for Resolution 2016.02.03.03

      The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the Board to appoint the RSSAC (Root Server System Advisory Committee) co-chairs as selected by the membership. The appointment of RSSAC (Root Server System Advisory Committee) co-chairs will allow the RSSAC (Root Server System Advisory Committee) to be properly composed to serve its function within ICANN (Internet Corporation for Assigned Names and Numbers)'s policy development work as an advisory committee.

      The appointment of co-chairs is not anticipated to have any fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC (Root Server System Advisory Committee).

      This is an Organizational Administrative Function for which no public comment is required.

   c. Rede egat on of the .TG doma n represent ng Togo to the Autor te de Reg ementat on des Secteurs de Postes et de Te ecommun cat ons (ART&P)

      Resolved (2016.02.03.04), as part of the exercise of its responsibilities under the IANA (Internet Assigned Numbers Authority) Functions Contract, ICANN (Internet Corporation for

Assigned Names and Numbers) has reviewed and evaluated the request to redelegate the .TG country-code top-level domain to Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P). The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.02.03.05), the Board directs that pursuant to Article III, Section 5.2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

Rationale for Resolutions 2016.02.03.04 – 2016.02.03.05

Why the Board is addressing the issue now?

In accordance with the IANA (Internet Assigned Numbers Authority) Functions Contract, the ICANN (Internet Corporation for Assigned Names and Numbers) staff has evaluated a request for ccTLD (Country Code Top Level Domain) redelegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) staff has followed the proper procedures.

What is the proposal being considered?

The proposal is to approve a request to IANA (Internet Assigned Numbers Authority) to change the sponsoring organization (also known as the manager or trustee) of the .TG country-code top-level domain to Autorite de Reglementation des Secteurs de Postes et de Telecommunications (ART&P).

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, ICANN (Internet Corporation for Assigned Names and Numbers) staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD (Country Code Top Level Domain), and their applicability to their local Internet community.

What concerns or issues were raised by the community?

Staff are not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

[Redacted – Sensitive Delegation Information]

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN (Internet Corporation for Assigned Names and Numbers)'s overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) Functions Contract.

Are there financial impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS (Domain Name System) root zone is part of the IANA (Internet Assigned Numbers Authority) functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN (Internet Corporation for Assigned Names and Numbers) to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

ICANN (Internet Corporation for Assigned Names and Numbers) does not believe this request poses any notable risks to security, stability or resiliency.

This is an Organizational Administrative Function not requiring public comment.

d. Delegation of the .ею ("eu") domain representing the European Union in Cyrillic script to EURid vzw/asbl

Resolved (2016.02.03.06), as part of the exercise of its responsibilities under the IANA (Internet Assigned Numbers Authority) Functions Contract, ICANN (Internet Corporation for Assigned Names and Numbers) has reviewed and evaluated the request to delegate the ею country-code top-level domain to EURid vzw/asbl. The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.02.03.07), the Board directs that pursuant to Article III, Section 5.2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

Rationale for Resolutions 2016.02.03.06 – 2016.02.03.07

Why the Board is addressing the issue now?

In accordance with the IANA (Internet Assigned Numbers Authority) Functions Contract, the ICANN (Internet Corporation for Assigned Names and Numbers) staff has evaluated a request for ccTLD (Country Code Top Level Domain) delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) staff has followed the proper procedures.

What is the proposal being considered?

The proposal is to approve a request to IANA (Internet Assigned Numbers Authority) to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to EURid vzw/asbl.

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, ICANN (Internet Corporation for Assigned Names and Numbers) staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD (Country Code Top Level Domain), and their applicability to their local Internet community.

What concerns or issues were raised by the community?

Staff are not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

[Redacted – Sensitive Delegation Information]

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN (Internet Corporation for Assigned Names and Numbers)'s overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) Functions Contract.

Are there financial impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS (Domain Name System) root zone is part of the IANA (Internet Assigned Numbers Authority) functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN (Internet Corporation for Assigned Names and Numbers) to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

ICANN (Internet Corporation for Assigned Names and Numbers) does not believe this request poses any notable risks to security, stability or resiliency.

This is an Organizational Administrative Function not requiring public comment.

e. Delegation of the .澳門 ("Macao") domain representing Macao in Traditional Chinese script to the Bureau of Telecommunications Regulation (DSRT)

Resolved (2016.02.03.08), as part of the exercise of its responsibilities under the IANA (Internet Assigned Numbers Authority) Functions Contract, ICANN (Internet Corporation for Assigned Names and Numbers) has reviewed and evaluated the request to delegate the .澳門 country-code top-level domain to the Bureau of Telecommunications Regulation (DSRT). The documentation demonstrates that the proper procedures were followed in evaluating the request.

Resolved (2016.02.03.09), the Board directs that pursuant to Article III, Section 5.2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, that certain portions of the rationale not appropriate for public distribution within the resolutions, preliminary report or minutes at this time due to contractual obligations, shall be withheld until public release is allowed pursuant to those contractual obligations.

Rationale for Resolutions 2016.02.03.08 – 2016.02.03.09

Why the Board is addressing the issue now?

In accordance with the IANA (Internet Assigned Numbers Authority) Functions Contract, the ICANN (Internet Corporation for Assigned Names and Numbers) staff has evaluated a request for ccTLD (Country Code Top Level Domain) delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that ICANN (Internet Corporation for Assigned Names and Numbers) staff has followed the proper procedures.

What is the proposal being considered?

The proposal is to approve a request to IANA (Internet Assigned Numbers Authority) to create the country-code top-level domain and assign the role of sponsoring organization (also known as the manager or trustee) to the Bureau of Telecommunications Regulation (DSRT).

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, ICANN (Internet Corporation for Assigned Names and Numbers) staff consults with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD (Country Code Top Level Domain), and their applicability to their local Internet community.

What concerns or issues were raised by the community?

Staff are not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

[Redacted – Sensitive Delegation Information]

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN (Internet Corporation for Assigned Names and Numbers)'s overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations under the IANA (Internet Assigned Numbers Authority) Functions Contract.

Are there financial impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS (Domain Name System) root zone is part of the IANA (Internet Assigned Numbers Authority) functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN (Internet Corporation for Assigned Names and Numbers) to assess the financial impact of the internal operations of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

ICANN (Internet Corporation for Assigned Names and Numbers) does not believe this request poses any notable risks to security, stability or resiliency.

This is an Organizational Administrative Function not requiring public comment.

2. Ma n Agenda:

   a. Cons derat on of Independent Rev ew Process Pane s F na Dec arat on n *Merck KGaA v. ICANN (Internet Corporation for Assigned Names and Numbers)*

   Whereas, on 11 December 2015, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRP filed by Merck KGaA (Merck) against ICANN (Internet Corporation for Assigned Names and Numbers) (Final Declaration).

   Whereas, in its IRP, Merck challenged the Board Governance Committee's (BGC) denial of Reconsideration Request 14-9, which in turn challenged the expert determinations overruling Merck's legal rights objections (LROs) to new gTLD (generic Top Level Domain) applications submitted by its former affiliate, U.S.-based Merck Sharp & Dohme Corporation, for strings incorporating the "Merck" mark (Expert Determinations).

   Whereas, the Panel denied Merck's IRP Request and, among other things, declared that the Board's actions did not in any way violate ICANN (Internet Corporation for Assigned Names and Numbers)'s Ar icles of Incorporation (Articles), Bylaws, or he Applicant Guidebook (Guidebook). (*See* Final Declaration, ¶¶ 41-68, https://www.icann.org/en/system/files/files/irp-merck-final-declaration-11dec15-en.pdf (/en/system/files/files/irp-merck-final-declaration-11dec15-en.pdf) [PDF, 1.47 MB].)

   Whereas, in accordance with Article IV, section 3.21 of ICAN's Bylaws, the Board has considered the Panel's Final Declaration.

   Resolved (2016.02.03.10), the Board accepts the findings of the Panel's Final Declaration: (1) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the *Merck KGaA v. ICANN (Internet Corporation for Assigned Names and Numbers)* IRP; (2) the Board acted without conflict of interest in taking its decision; (3) the Board exercised due diligence and care in having a reasonable amount of facts in front of them; (4) the Board exercised independent judgment in taking the decision, believed to be in the best interests of the company; (5) the Board (including the Board Governance Committee) did not violate the Articles, Bylaws, or Guidebook; and (6) Merck shall reimburse ICANN (Internet Corporation for Assigned Names and Numbers) costs in the amount of US$48,588.54.

   Rationale for Resolution 2016.02.03.10

   Merck KGaA (Merck) filed a request for an Independent Review Process (IRP), which arose out of its legal rights objections (LROs) to new gTLD (generic Top Level Domain) applications

submitted by its former affiliate, U.S.-based Merck Sharp & Dohme Corporation, for strings incorporating the "Merck" mark. Merck's LROs were overruled (Expert Determinations). Merck filed Reconsideration Request 14-9 challenging the Expert Determinations. The Board Governance Committee (BGC) denied Reconsideration Request 14-9, finding that Merck had not stated proper grounds for reconsideration and that the Request failed to demonstrate that the expert panel had acted in contravention of established policy or procedure. Merck's IRP Request challenged the denial of Reconsideration Request 14-9 and, among other things, also argued that the Board should have taken further action with respect to the Expert Determinations.

On 11 December 2015, the three-member IRP Panel (Panel) issued its Final Declaration. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the Board adopts the findings of the Panel, which are summarized below, and can be found in full at https://www.icann.org/en/system/files/files/irp-merck-final-declaration-11dec15-en.pdf (/en/system/files/files/irp-merck-final-declaration-11dec15-en.pdf) [PDF, 1.47 MB].

Using the applicable standard of review, the Panel found that: (1) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the *Merck KGaA v. ICANN (Internet Corporation for Assigned Names and Numbers)* IRP; (2) the Board acted without conflict of interest in taking its decision; (3) the Board exercised due diligence and care in having a reasonable amount of facts in front of them; (4) the Board exercised independent judgment in taking the decision, believed to be in the best interests of the company; and (5) the Board's actions or inactions did not, in any way, violate the Articles of Incorporation (Articles), Bylaws, or Applicant Guidebook (Guidebook). (*See* Final Declaration, ¶¶ 41-68.)

More specifically, as the Panel found, the standard of review for an IRP is specifically prescribed in Article IV, Section 3.4 of the Bylaws, and "the Panel may not substitute its own view of the merits of the underlying dispute." (*Id.* at ¶¶ 21-22.) The Panel further found that the reconsideration process is "of limited scope" as set forth in Article IV, Section 2.2 of the Bylaws, and "[n]one of th[e] three bases for the Request for Reconsideration process requires or even permits this Panel to provide for a substitute process for exploring a different conclusion on the merits." (*Id.* at ¶ 47.) The Panel also found that: "this Panel does not, because of the precise and limited jurisdiction we have, have the power to second guess [the BGC's determination] that the Sole Panel Expert [in the legal rights objection proceedings] did not apply the wrong standards." (*Id.* at ¶ 49.) The Panel was also clear that "a referral or appeal process for LRO decisions…was not included in the [Guidebook] and it is not open to this Panel to create it." (*Id.* at ¶ 60.) In summary, the Panel explained that "Merck's complaints are, in short, not focused on the applicable test by which this Panel is to review Board action, but rather are focused on the correctness of the conclusion of the Sole Panel Expert [, which] is not a basis for action by this Panel…." (*Id.* at ¶ 50.)

Merck also claimed that ICANN (Internet Corporation for Assigned Names and Numbers) discriminated against Merck through the Board's (and the BGC's) acceptance of the Expert Determinations because the "*Board has provided the possibility for third-party review of some prima facie erroneous expert determinations while denying the same to other, similarly situated parties, including the Claimant.*" (*Id.* at ¶ 53(emphasis in original).) In response to this claim, the Panel found that:

> As to the claim of discrimination, this Panel finds that it was within the discretion of the BGC and Board…to conclude that the Sole Expert had applied the correct legal standard to the correctly found set of facts. Of course, in different cases, the BGC and Board are entitled to pursue different options depending upon the nature of the cases at issue. It is insufficient to ground an argument of discrimination simply to note that on different occasions the Board has pursued different options among those available to it. [¶] In conclusion, Merck was not discriminated against.

(*Id.* at ¶ 61.)

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN (Internet Corporation for Assigned Names and Numbers)'s long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel's Final Declaration as indicated above. Adopting the Panel's Final Declaration will have no direct financial impact on the organization and no direct impact on the security, stability or resiliency of the domain name system. This is an Organizational Administrative function that does not require public comment.

b. Recons derat on Requests 15-19 (the ICANN (Internet Corporat on for Ass gned Names and Numbers) Bus ness Const tuency & the ICANN (Internet Corporat on for Ass gned Names and Numbers) Noncommerc a Stakeho der Group (NCSG (Non-Commerc a Stakeho ders Group))) and 15-20 (The Internet Commerce Assoc at on)

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Business Constituency and the ICANN (Internet Corporation for Assigned Names and Numbers) Noncommercial Stakeholders (Stakeholders) Group filed Reconsideration Request 15-19, and the Internet Commerce Association filed Reconsideration Request 15-20 (collectively, "Requesters"), both of which seek reconsideration of ICANN (Internet Corporation for Assigned Names and Numbers) Board Resolutions 2015.09.28.04 (renewal of .CAT registry agreement), 2015.09.28.05 (renewal of .TRAVEL registry agreement), and 2015.09.28.06 (renewal of .PRO registry agreement).

Whereas, the Board Governance Committee ("BGC") thoroughly considered the issues raised in Reconsideration Requests 15-19 and 15-20 and all related materials.

Whereas, the BGC recommended that Reconsideration Requests 15-19 and 15-20 be denied because the Requesters have not stated proper grounds for reconsideration, and the Board agrees.

Resolved (2016.02.03.11), the Board adopts the BGC's Recommendation on Reconsideration Requests 15-19 and 15-20, which can be found at https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf (/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf) [PDF, 146 KB].

Rationale for Resolution 2016.02.03.11

I. **Brief Summary**

In passing Board Resolutions 2015.09.28.04, 2015.09.28.05, and 2015.09.28.06 (collectively, the "Resolutions"), the ICANN (Internet Corporation for Assigned Names and Numbers) Board approved the renewal of registry agreements for three legacy TLDs—.CAT, .TRAVEL, and .PRO, respectively. The three renewed registry agreements ("Renewed Registry Agreements") are the result of bilateral negotiations between ICANN (Internet Corporation for Assigned Names and Numbers) staff and the respective registry operators. The Renewed Registry Agreements are based on the form of the registry agreement for new gTLDs ("New gTLD (generic Top Level Domain) Registry Agreement") and include new gTLD (generic Top Level Domain) rights protection mechanisms ("RPMs") such as the Trademark Post-Delegation Dispute Resolution Procedure ("Trademark PDDRP") and the Uniform Rapid Suspension system ("URS"), which did not exist under the legacy registry agreements.

In seeking reconsideration of the Resolutions, the Requesters note that the Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Suppor ing Organization)") has not yet issued a consensus policy regarding the application of new gTLD (generic Top Level Domain) RPMs to legacy TLDs and suggest that the Renewed Registry Agreements represent an attempt by ICANN (Internet Corporation for Assigned Names and Numbers) staff to preempt that policy development process. The Requesters further assert that, in passing the Resolutions, the Board failed to consider: (1) the details of the relevant contract negotiations, specifically email communications and other documents reflecting communications between ICANN (Internet Corporation for Assigned Names and Numbers) staff and the relevant registry operators; and (2) a later-published preliminary issue report by ICANN (Internet Corporation for Assigned Names and Numbers) staff regarding gTLD (generic Top Level Domain) RPMs ("Preliminary Issue Report"), which recommends, among other things, that a GNSO (Generic Names Supporting Organization) policy development process be undertaken to address the application of RPMs to legacy TLDs generally.

The Requesters' claims do not support reconsideration. The inclusion of the new gTLD (generic Top Level Domain) RPMs in the Renewed Registry Agreements is part of he package of agreed-upon terms resulting from the bilateral negotiations between ICANN (Internet Corporation for Assigned Names and Numbers) and each registry operator, and not, as Requesters claim, a "unilateral decision by ICANN (Internet Corporation for Assigned Names and Numbers) contractual staff." The Requesters present no evidence to the contrary – i.e., that applying the new gTLD (generic Top Level Domain) RPMs to

the Renewed Registry Agreements was based on a unilateral decision by ICANN (Internet Corporation for Assigned Names and Numbers) staff. The Requesters suggest that the Board should have reviewed all of ICANN (Internet Corpora ion for Assigned Names and Numbers) staff's communications with the .CAT, .TRAVEL, and .PRO registry operators in order to confirm that the negotiations were in fact bilateral. Such contention, however, does not support reconsideration. Staff provided the Board with all material information, including the comments from the public comment forum, for consideration. In approving the Resolutions, the Board considered all material information provided by staff. No policy or procedure requires the Board to review each and every email or o her written exchange between ICANN (Internet Corporation for Assigned Names and Numbers) staff and registry operators during the course of he negotiations and the Requesters do not identify any particular piece of material information that the Board failed to consider. Moreover, as is publicly posted in the respective public comment reports as well as in the Board's rationales for each of the Resolutions, the registry operators specifically "expressed their interest to renew their registry agreement based on the New gTLD (generic Top Level Domain) Registry Agreement." Indeed, not one of these registry operators has indicated that their renewal negotiations were anything but bilateral or sought reconsideration of either staff or Board action as it relates to the Renewed Registry Agreements. Further, the registry agreements each called for presumptive renewal of the agreements at their expiration so long as certain requirements were met – meaning that, if the parties took no action, the registry agreements would have renewed automatically under the same terms as the original registry agreements so as long as the registry operators were in good standing at the time of renewal as provided in the registry agreements.[1] At the time of renewal, these registry operators were in good standing and were therefore subject to he terms of the presumptive renewal. The registry operators, however, elected to enter into negotiations with ICANN (Internet Corporation for Assigned Names and Numbers) based on the existing New gTLD (generic Top Level Domain) Registry Agreement terms.

As the Requesters have not demonstrated that the Board failed to consider any material information in passing the Resolutions, they have not stated a basis for reconsideration of the Resolutions.

II. **Facts**

The BGC Recommendation on Reconsideration Requests 15-19 and 15-20, which sets forth in detail the facts relevant to this matter, is hereby incorporated by reference and shall be deemed a part of his Rationale. The BGC Recommendation on Reconsideration Requests 15-19 and 15-20 is available at https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf (/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf) [PDF, 146 KB], and is attached as Exhibit C to the Reference Materials.

III. **Issues**

In view of the claims set forth in Requests 15-19 and 15-20, the issues for reconsideration are whether ICANN (Internet Corporation for Assigned Names and Numbers)'s Board failed to consider material information in passing the Resolutions approving the renewal of the registry agreements for .CAT, .TRAVEL, and .PRO.

IV. **The Relevant Standards for Evaluating Reconsideration Requests**

The BGC Recommendation on Reconsideration Requests 15-19 and 15-20, which sets forth the relevant standards for evaluating reconsideration requests, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Requests 15-19 and 15-20 is available at https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf (/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf) [PDF, 146 KB], and is attached as Exhibit C to the Reference Materials.

V. **Analysis and Rationale**

The Requesters claim, without support, that ICANN (Internet Corporation for Assigned Names and Numbers) staff unilaterally imposed the New gTLD (generic Top Level

Domain) Registry Agreement as a starting point for the Renewed Registry Agreements and, therefore, "transform[ed] the PDDRP and URS into de facto Consensus (Consensus) Policies without following the procedures laid out in ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws for their creation." Contrary to what the Requesters claim, while he registry operators had a presumptive right of renewal under the terms of their existing legacy registry agreement, they chose to re-negotiate and renew their agreements based upon the New gTLD (generic Top Level Domain) Registry Agreement terms.

The Board's Rationales for the Resolutions as well as the public comment reports make clear that the Renewed Registry Agreements were "based on the bilateral negotiations between ICANN (Internet Corporation for Assigned Names and Numbers) and the [respective] Registry Operator[s], where [the] Registry Operator[s] expressed their interest to renew their registry agreement based on the New gTLD (generic Top Level Domain) Registry Agreements." The Board further stated in the Rationales for the Resolutions that the "inclusion of the URS was developed as part of the proposal in bilateral negotiations," and confirmed that the URS "has not been adopted as a consensus policy and ICANN (Internet Corporation for Assigned Names and Numbers) has no ability to make it mandatory for any TLDs other than new gTLD (generic Top Level Domain) applicants who applied during the first round," and that "the Board's approval of the Renewal Registry Agreements[s] for .CAT, .PRO, and .TRAVEL] is not a move to make the URS mandatory for any legacy TLDs, and it would be inappropriate to do so." In short, the Requesters' claim that the provisions of the New gTLD (generic Top Level Domain) Registry Agreement were in some way imposed on the registry operators is unsupported.

Reconsideration of a Board action, the process that Requesters have invoked here, is warranted only where the Board took action without consideration of material information or with reliance upon false or inaccurate information. Here, the Requesters do not identify any material information that the Board purportedly failed to consider in passing the Resolutions. More specifically, the Requesters provide no support for their argument that the Board failed to consider "the actual record of exchanges—emails and other correspondence, as well as notes and minutes of meeting and discussions—between [ICANN (Internet Corporation for Assigned Names and Numbers)] staff and officers and the personnel of these three registries that would support the conclusion that [the parties engaged in] bilateral negotiations…" The Requesters also present no support for their claim that the Board failed to consider the Preliminary Issue Report (because it "did not exist at the time of the Board's decision"). As a result, the BGC concluded and the Board agrees that reconsideration is not appropriate.

First, the Requesters do not identify any material information that the Board purportedly failed to consider. That is, the Requesters do not identify any evidence that the negotiations between ICANN (Internet Corpora ion for Assigned Names and Numbers) and the registry operators were not bilateral in nature because no such evidence exists. As there is no policy or procedure that requires the Board to review each and every email or other written exchange between ICANN (Internet Corporation for Assigned Names and Numbers) staff and registry operators during the course of the contract negotiations, the Requesters do not and cannot identify such a policy or procedure. The Requesters' substantive disagreement with the Board's actions does not mean that the Board's actions were taken without consideration of all relevant material information.

Second, the Requesters claim that the Board failed to consider the Preliminary Issue Report, which invited community feedback regarding the inclusion of several topics in a GNSO (Generic Names Supporting Organization) policy development process charter, including "whether any of the new [RPMs] (such as the URS) should, like the UDRP (Uniform Domain-Name Dispute Resolution Policy), be Consensus (Consensus) Policies applicable to all gTLDs." The Requesters claim that, in light of the Preliminary Issue Report, the Renewed Registry Agreements will "interfer[e] with the standard policy development process." However, as the Requesters acknowledge, the Preliminary Issue Report did not exist at the time the Resolutions were approved, and thus could not constitute "material information" the Board failed to consider in approving the Resolutions. As such, no reconsideration is warranted on this basis.

In addition, the Board does not find, as he Requesters suggest, that the Renewed Registry Agreements will "interfere[e] with the standard policy development process." As discussed above, the Board explicitly acknowledged, in the Rationales for the Resolutions, that the URS has not been adopted as consensus policy and that ICANN (Internet Corporation for Assigned Names and Numbers) therefore has no ability to

impose the URS (or other new RPMs applicable to new gTLDs) on legacy TLDs. The existence of certain RPMs in the Renewed Registry Agreements, therefore, has no bearing on the GNSO (Generic Names Supporting Organization) policy development process to determine whether (or not) any of the new RPMs should be consensus policies applicable to all gTLDs. Accordingly, reconsideration is not appropriate.

The full BGC Recommendation on Reconsideration Requests 15-19 and 15-20, which sets forth the analysis and rationale in detail and with which he Board agrees, is hereby incorporated by reference and shall be deemed a part of this Rationale. The BGC Recommendation on Reconsideration Requests 15-19 and 15-20 is available at https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf (/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf) [PDF, 146 KB], and is attached as Exhibit C to the Reference Materials.

VI. **Decision**

The Board had the opportunity to consider all of the materials submitted by or on behalf of the Requesters or that otherwise relate to Reconsideration Requests 15-19 and 15-20. Following consideration of all relevant information provided, he Board reviewed and has adopted the BGC's Recommendation on Reconsideration Requests 15-19 and 15-20 (https://www.icann.org/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf (/en/system/files/files/reconsideration-request-15-19-bc-ncsg-request-15-20-ica-bgc-recommendation-13jan16-en.pdf) [PDF, 146 KB]), which shall be incorporated by reference here and deemed a part of his Rationale and is attached as Exhibit C to the Reference Materials to the Board Paper on this matter.

Adopting the BGC's recommendation has no direct financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not impact he security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

c. Cons derat on of Expert Determ nat on Re: Object on to App cat on for .HOSPITAL

Whereas, on 16 December 2013, an Expert Panel upheld the Independent Objector's (IO) Limited Public Interest (LPI) objection to Ruby Pike, LLC's (Ruby Pike) application for .HOSPITAL (.HOSPITAL Expert Determination).

Whereas, Ruby Pike contends that the .HOSPITAL Expert Determination deviates from the expert determinations for all other heath-related LPI objections and that the outlying result is, at a minimum, as inconsistent and unreasonable as the string confusion objection determinations for which ICANN (Internet Corporation for Assigned Names and Numbers) has directed re-evaluation.

Whereas, Ruby Pike initiated a Cooperative Engagement Process (CEP) regarding the .HOSPITAL Expert Determination upholding the IO's LPI objection to Ruby Pike's application for .HOSPITAL.

Whereas, as part of the CEP, the Board has been asked to evaluate this matter and to take action to deal with what Ruby Pike believes to be the inconsistent and unreasonable .HOSPITAL Expert Determination.

Whereas, the Board Governance Committee (BGC): (i) has carefully considered the .HOSPITAL Expert Determination and Ruby Pike's arguments about it; (ii) agrees with Ruby Pike that the Objection proceedings leading to the .HOSPITAL Expert Determination should be re-evaluated, particularly in comparison to the other eight health-related LPI expert determinations; and (iii) recommends that the Board send the .HOSPITAL Objection back for re-evaluation by a new three-party expert panel.

Whereas, the Board has carefully considered the BGC's recommendation and the information and arguments Ruby Pike has presented, as well the .HOSPITAL Expert Determination in comparison to the other eight health-related LPI expert determinations.

Whereas, after consideration, the Board finds that the .HOSPITAL Expert Determination is seemingly inconsistent with the Expert Determinations resulting from all other health related LPI objections.

Whereas, as set out in the Applicant Guidebook, ICANN (Internet Corporation for Assigned Names and Numbers) has reserved the right to individually consider any application for a new gTLD (generic Top Level Domain) to determine whether approval would be in the best interest of the Internet community.

Resolved (2016.02.03.12), the Board has identified the .HOSPITAL Expert Determination as not being in the best interest of the New gTLD (generic Top Level Domain) Program and the Internet community.

Resolved (2016.02.03.13), the Board directs the President and CEO, or his designee(s), to take all steps necessary to address the perceived inconsistency and unreasonableness of the .HOSPITAL Expert Determination by sending all of the materials for the relevant objection proceeding back to the International Centre of Expertise of the International Chamber of Commerce (ICC (International Chamber of Commerce)), which should in turn establish a new three-member expert panel to re-evaluate those materials in accordance with the criteria for LPI objections as set forth in the Applicant Guidebook. In doing so, the new three-member expert panel should also review as background the "Related LPI Expert Determinations" referenced in the following chart.

Related LPI Expert Determinations	String
Independent Objector v. DotHealth, LLC (http://newgtlds.icann.org/sites/default/files/drsp/23dec13/determination-2-1-1684-6394-en.pdf) [PDF, 154 KB]	.HEALTH
Independent Objector v. Goose Fest, LLC (http://newgtlds.icann.org/sites/default/files/drsp/23dec13/determination-2-1-1489-82287-en.pdf) [PDF, 153 KB]	.HEALTH
Independent Objector v. Afilias Limited (http://newgtlds.icann.org/sites/default/files/drsp/15nov13/determination-1-1-868-3442-en.pdf) [PDF, 406 KB]	.HEALTH
Independent Objector v. Silver Glen, LLC (http://newgtlds.icann.org/sites/default/files/drsp/06dec13/determination-2-1-1492-32589-en.pdf) [PDF, 437 KB]	.HEALTHCARE
Independent Objector v. HEXAP SAS (http://newgtlds.icann.org/sites/default/files/drsp/10jan14/determination-1-1-1192-28569-en.pdf) [PDF, 474 KB]	.MED
Independent Objector v. Medistry LLC (http://newgtlds.icann.org/sites/default/files/drsp/10jan14/determination-2-1-907-38758-en.pdf) [PDF, 396 KB]	.MED
Independent Objector v. Charleston Road Registry Inc. (http://newgtlds.icann.org/sites/default/files/drsp/10jan14/determination-2-1-1139-2965-en.pdf) [PDF, 427 KB]	.MED
Independent Objector v. Steel Hill, LLC (http://newgtlds.icann.org/sites/default/files/drsp/10jan14/determination-2-1-1561-23663-en.pdf) [PDF, 536 KB]	.MEDICAL

Rationale for Resolutions 2016.02.03.12 – 2016.02.03.13

The Board's action today, addressing how to deal with inconsistent and/or unreasonable Expert Determinations from the New gTLD (generic Top Level Domain) Program LPI process, is part of the Board's role to provide general oversight of the New gTLD (generic Top Level Domain) Program. The action being approved today is to direct re-evaluation of the .HOSPITAL LPI objection proceeding which resulted in the .HOSPITAL Expert Determination. Pursuant to the Applicant Guidebook (Guidebook), the Board has the discretion to individually consider an application for a new gTLD (generic Top Level Domain). (Guidebook Module 6.3,

http://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf
(http://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf) [PDF, 130 KB].) The Board's
action arises from Ruby Pike's arguments that the .HOSPITAL Expert Determination deviates
from all other health-related LPI expert determinations and that the result is inconsistent and
unreasonable such that it warrants further action. (*See* Letter from J. Genga to A. Stathos,
dated 15 April 2015, at 8, attached as Attachment A to the Reference Materials.) As set forth in
further detail in the Reference Materials, which are incorporated herein by reference, Ruby Pike,
an affiliate of Donuts, Inc., argues that the Board (via the New gTLD (generic Top Level
Domain) Program Committee (NGPC)) has previously taken steps to address other inconsistent
and unreasonable results by initiating a re-evaluation of a certain string confusion objection
(SCO) expert determinations (SCO Final Review Mechanism) and should do so here as well.
(See id)

The Board notes that when it provided for a limited SCO Final Review Mechanism for just a very
few expert determinations from string confusion objection proceedings, the NGPC specifically
considered, but excluded its application to other forms of objections.

> The NGPC considered whether it was appropriate, as suggested by some commenters,
> to expand the scope of the proposed review mechanism to include other Expert
> Determinations, such as some resulting from Community and Limited Public Objections,
> as well as other String Confusion Objection Expert Determinations, and possibly singular
> and plural versions of the same string. The NGPC determined that to promote the goals
> of predictability and fairness, establishing a review mechanism more broadly may be
> more appropriate as part of future community discussions about subsequent rounds of
> the New gTLD (generic Top Level Domain) Program. Applicants have already taken
> action in reliance on many of the Expert Determinations, including signing Registry
> Agreements, transitioning to delegation, withdrawing their applications, and requesting
> refunds. Allowing these actions to be undone now would not only delay consideration of
> all applications, but would raise issues of unfairness for those that have already acted in
> reliance on the Applicant Guidebook.

(See https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b
(/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b).)

Here, although not directly on point, the Board is uniquely swayed, as was the BGC, by Ruby
Pike's assertions that the .HOSPITAL Expert Determination is inconsistent with the other eight
health-related LPI Expert Determinations, thereby rendering it potentially unreasonable, and
thereby warranting re-evaluation. As part of its deliberations, the Board took into consideration
the following factors, which the BGC had previously evaluated in making its recommendation:

- The .HOSPITAL Expert Determination is inconsistent with the results of the eight other
  health related LPI objections that resulted in expert determinations, all of which were filed
  by the IO. The materials submitted by the IO and the Applicant to the Expert Panels in
  each instance were very similar and, in some instances, nearly identical (i.e., .HOSPITAL,
  .MEDICAL, and .HEALTHCARE).

- The .HOSPITAL Expert Determination is the only LPI objection, out of the total of ten LPI
  objections that resulted in expert determinations, where the expert determination was in
  favor of the objector rather than the applicant.

- The .HOSPITAL Determination is the only LPI expert determination with a split panel
  decision.

- The .HOSPITAL Determination is the only LPI expert determination where a dissenting
  opinion was issued.

- Four of the nine health related LPI objections filed by the IO were against applications by
  subsidiaries of Donuts, Inc. (Steel Hill, LLC (.MEDICAL); Goose Fest, LLC (.HEALTH);
  Silver Glen, LLC (.HEALTHCARE); and Ruby Pike, LLC (.HOSPITAL). The objections
  filed by the IO in all four objections are virtually identical. The .HOSPITAL Determination is
  the only determination in favor of the objector.

- The .HOSPITAL Expert Panel is the only health related LPI expert panel that evaluated
  the sufficiency of certain protections and safeguards as part of its determination while
  other expert panels deferred to ICANN (Internet Corporation for Assigned Names and
  Numbers) to implement and enforce such safeguards as necessary. (*See*
  http://newgtlds.icann.org/sites/default/files/drsp/06dec13/determination-2-1-1492-32589-

en.pdf (http://newgtlds.icann.org/sites/default/files/drsp/06dec13/determination-2-1-1492-32589-en.pdf) [PDF, 437 KB]).

- Because there are no other competing applications of the .HOSPITAL TLD (Top Level Domain), this action would not impact other .HOSPITAL applications and therefore would not contradict the NGPC's concern that expanding that re-review would delay consideration of competing applications. (*See* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b (/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b)).

Given these circumstances, the Board is a persuaded, as was the BGC, that, consistent with the manner in which the Board had addressed previous inconsistent or unreasonable expert determinations, a re-evaluation of the objection proceedings against Ruby Pike's application for .HOSPITAL is warranted at this time. The re-evaluation proceeding will be administered in accordance with the ICC (International Chamber of Commerce) Expert Rules for Administration of Expert Proceedings, which include the following:

- The review panel will consist of three members appointed by the ICC (International Chamber of Commerce) (the "Review Panel").

- The only issue subject to review shall be the .HOSPITAL objection proceedings and the resulting Expert Determination.

- The record on review shall be limited to the documentary evidence admitted into evidence during the original proceeding. No additional documents, briefs or other evidence may be submitted for consideration, except that the Review Panel shall also consider the identified "Related LPI Expert Determinations" in the above chart as part of its review of the .HOSPITAL objection proceeding and resulting Expert Determination.

- The standard of review to be applied by the Review Panel is: whether the original Expert Panel could have reasonably come to the decision reached in the underlying .HOSPITAL LPI objection proceeding through an appropriate application of the standard of review as set forth in the Guidebook.

- ICANN (Internet Corporation for Assigned Names and Numbers) will pay the applicable fees of the Review Panel.

- The possible outcomes of the review are: (1) the original .HOSPITAL Expert Determination is supported by the standard of review and reference to the identified Related LPI Expert Determinations, and will stand as is; or (2) the original .HOSPITAL Expert Determination reasonably cannot be supported based on the standard of review and reference to the identified Related LPI Expert Determinations, and will be reversed. The Review Panel will submit a written determination including an explanation and rationale for its determination.

There will be a fiscal impact associated with the adoption of this resolution, but nothing that will not or cannot be covered by the existing New gTLD (generic Top Level Domain) Program budget. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

This is an Organizational Administrative Action not requiring public comment.

d. Ombudsman Report Regard ng Comp a nt by Hu Y G oba Informat on Resources (app cant for .招聘 ("recru tment" n Ch nese))

Whereas, a String Confusion Objection was filed against Hu Yi Global Information Resources Company's (Hu Yi's) application for the new gTLD (generic Top Level Domain) .招聘 (meaning "recruitment" in Chinese) (Application) by Employ Media LLC.

Whereas, the International Centre for Dispute Resolution (ICDR) sustained the objection because the ICDR "determined that the Applicant is deemed to be in default as it has failed to file a timely Response to the Objection."

Whereas, Hu Yi filed a complaint with the Ombudsman on 9 June 2015 explaining that Employ Media LLC no longer objected to its Application for .招聘.

Whereas, the Ombudsman issued a report to the ICANN (Internet Corporation for Assigned Names and Numbers) Board regarding Hu Yi's complaint, and set out facts based on his investigation and made specific recommendations in his report.

Whereas, the Board reviewed the Ombudsman Report and thoroughly considered his recommendations.

Resolved (2016.02.03.14), the Board directs the President, Global Domains Division, or his designee(s), to change the status of the Application from "Will Not Proceed" to "Evaluation Complete," and to permit Hu Yi's Application for .招聘 to proceed through the remainder of the new gTLD (generic Top Level Domain) application process.

Rationale for Resolution 2016.02.03.14

The ICANN (Internet Corporation for Assigned Names and Numbers) Ombudsman reports directly to the ICANN (Internet Corporation for Assigned Names and Numbers) Board. The Ombudsman is an important Accountability Mechanism found in ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws. The purpose of the Ombudsman is to help evaluate whether members of the ICANN (Internet Corporation for Assigned Names and Numbers) community have been treated fairly. The Ombudsman acts as a neutral in attempting to resolve complaints using alternative dispute resolution (ADR (Alternative Dispute Resolution)) techniques. Where, in the course of an investigation of a complaint, the Ombudsman forms an opinion that there has been an issue of administrative fairness, the Ombudsman may notify the Board of the circumstances.

The Ombudsman has issued a report to the Board regarding the closing out of Hu Yi Global Information Resources Company's (Hu Yi's) application for the new gTLD (generic Top Level Domain) .招聘 (meaning "recruitment" in Chinese) (Application) as a result of the default determination issued on the String Confusion Objection. The Ombudsman has recommended that the Board "revive" (or cause to be revived) the Applica ion and permit it to proceed through the remainder of the new gTLD (generic Top Level Domain) application process. Hu Yi is the only applicant for the new gTLD (generic Top Level Domain) .招聘 ("recruitment" in Chinese); and Employ Media LLC is the only entity that filed an objection to the Application. Since its initial filing of the objection, Employ Media has explicitly indicated to ICANN (Internet Corporation for Assigned Names and Numbers) and to the Ombudsman that it no longer objects to the Application. Thus, the Ombudsman determined that permitting the Application to proceed would have no impact on any other applicant and would have no impact on any objector (because there is none). In addition, the Board understands that there are no further evaluation or objection proceedings to which the Application would need to be subjected. The next step in the application process is the contracting phase.

In light of the unique set of circumstances presented here (namely, the fact that the objection was sustained only on procedural grounds, and that the objector later explicitly rescinded the objection and in fact supported the Application), and after a review of the Ombudsman Report, the Board has determined to follow the Ombudsman's recommendation, and direct the President, Global Domains Division or his designee(s) to proceed with processing Hu Yi's Application for the gTLD (generic Top Level Domain) .招聘 through the remainder of the new gTLD (generic Top Level Domain) application process. Taking this action will have a positive impact on ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability to the community, as it is appropriate to review all applicable circumstances and recommendations resulting from one of ICANN (Internet Corporation for Assigned Names and Numbers)'s long-standing Accountability Mechanisms when taking decisions that have significant impact on applicants.

This decision has no direct financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) and will not impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

e. GAC (Governmenta Adv sory Comm ttee) Adv ce: Dub n Commun qué (October 2015)

Whereas, the Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 55 meeting in Dublin, Ireland and issued a Communiqué (/en/system/files/correspondence/gac-to-board-21oct15-en.pdf) [PDF, 165 KB] on 21 October 2015 ("Dublin Communiqué").

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board New gTLD (generic Top Level Domain) Program Committee, which was decommissioned in October

2015, previously adopted a series of scorecards to respond to certain items of the GAC (Governmental Advisory Committee)'s advice concerning the New gTLD (generic Top Level Domain) Program. The Board has developed another iteration of the scorecard to respond to the advice in the Dublin Communiqué.

Resolved (2016.02.03.15), the Board adopts the scorecard titled "GAC (Governmental Advisory Committee) Advice – Dublin Communiqué 21 October 2015: Actions and Updates (3 February 2016) (/en/system/files/files/resolutions-annex-1-03feb16-en.pdf)" [PDF 136 KB] in response to items of GAC (Governmental Advisory Committee) advice in the Dublin Communiqué.

Rationale for Resolution 2016.02.03.15

Article XI, Section 2.1 (/en/about/governance/bylaws#XI) of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws permit the GAC (Governmental Advisory Committee) to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC (Governmental Advisory Committee) issued advice to the Board on various matters, including the New gTLD (generic Top Level Domain) Program, in its Dublin Communiqué (21 October 2015). The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee)'s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC (Governmental Advisory Committee) advice was not followed.

The ICANN (Internet Corporation for Assigned Names and Numbers) Board New gTLD (generic Top Level Domain) Program Committee (NGPC) previously addressed items of the GAC (Governmental Advisory Committee)'s advice concerning new gTLDs issued in Communiqués from Beijing (April 2013), Durban (July 2013), Buenos Aires (November 2013), Singapore (March 2014), London (June 2014), Los Angeles (October 2014), Singapore (February 2015), and Buenos Aires (June 2015). The NGPC was decommissioned in October 2015, and the Board continues to maintain general oversight and governance over the New gTLD (generic Top Level Domain) Program and provide strategic and substantive guidance on New gTLD (generic Top Level Domain)-related topics as the current round of the Program comes to a conclusion. The Board is taking action to address the new advice from the GAC (Governmental Advisory Committee) in the Dublin Communiqué related to the New gTLD (generic Top Level Domain) Program, as well as other advice. The Board's actions are described in scorecard dated 3 February 2016 (/en/system/files/files/resolutions-annex-1-03feb16-en.pdf) [PDF, 136 KB].

In adopting its response to the GAC (Governmental Advisory Committee) advice in the Dublin Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- GAC (Governmental Advisory Committee) Beijing Communiqué (https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB] (April 2013); GAC (Governmental Advisory Committee) Durban Communiqué (https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB] (July 2013); GAC (Governmental Advisory Committee) Buenos Aires Communiqué (https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Comm_version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB] (November 2013); GAC (Governmental Advisory Committee) Singapore Communiqué (https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Sing_5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2) [PDF, 147 KB] (as amended) (March 2014); GAC (Governmental Advisory Committee) London Communiqué (https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf?version=1&modificationDate=1406852169128&api=v2) [PDF, 138 KB] (June 2014); GAC (Governmental Advisory Committee) Los Angeles Communiqué (/en/system/files/correspondence/gac-to-board-15oct14-en.pdf) [PDF, 127 KB] (October 2014); GAC (Governmental Advisory Committee) Singapore Communiqué (/en/system/files/correspondence/gac-to-board-11feb15-en.pdf) [PDF, 113 KB] (February 2015); GAC (Governmental Advisory Committee) Buenos Aires Communiqué (https://gacweb.icann.org/download/attachments/27132037/GAC%20Buenos%20Aires%

2053%20Communique.pdf?version=1&modificationDate=1435188375963&api=v2) [PDF, 106 KB] (June 2015); GAC (Governmental Advisory Committee) Dublin Communiqué (/en/system/files/correspondence/gac-to-board-21oct15-en.pdf) [PDF, 165 KB] (October 2015)

- Applicant responses to GAC (Governmental Advisory Committee) advice: http://newgtlds.icann.org/en/applicants/gac-advice/ (http://newgtlds.icann.org/en/applicants/gac-advice/)

- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf (http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf) [PDF, 260 KB]

- 9 November 2015 letter (/en/system/files/correspondence/diaz-to-crocker-09nov15-en.pdf) [PDF, 294 KB] from the Registry Stakeholder Group to the ICANN (Internet Corporation for Assigned Names and Numbers) Board regarding the GAC (Governmental Advisory Committee)'s advice in the Dublin Communiqué regarding the use of two-character country codes.

The adoption of the GAC (Governmental Advisory Committee) advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC (Governmental Advisory Committee) on the New gTLD (generic Top Level Domain) Program and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

This is an Organizational Administrative function that does not require public comment.

f. Board Governance Comm ttee Recommendat on Regard ng Imp ementat on of Pub c Interest Comm tments for .DOCTOR Reg stry Agreement

Whereas, at its 6 May 2015 meeting, the Board Governance Committee (BGC) recommended that "the NGPC again review the proposed implementation of a public interest commitment for the .DOCTOR TLD (Top Level Domain), and to re-evaluate the NGPC's 12 February 2015 determination."

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board New gTLD (generic Top Level Domain) Program Committee (NGPC) was decommissioned on 22 October 2015 and the Board continues to maintain general oversight and governance over the New gTLD (generic Top Level Domain) Program and provide strategic and substantive guidance on New gTLD (generic Top Level Domain)-related topics as the current round of the Program comes to a conclusion.

Resolved (2016.02.03.16), the Board reaffirms the NGPC's acceptance of the Governmental Advisory Committee (Advisory Committee)'s (GAC (Governmental Advisory Committee)) advice (https://gacweb.icann.org/download/attachments/33849634/FINAL_Buenos_Aires_GAC_Communiqu version=1&modificationDate=1390438464000&api=v2) [PDF, 97 KB] issued in the Buenos Aires Communiqué (20 November 2013) regarding .DOCTOR, and clarifies that the President and CEO, or his designee(s), is directed to implement the GAC (Governmental Advisory Committee)'s advice by including in the .DOCTOR Registry Agreement the eight additional Public Interest Commitments associated with highly-regulated TLDs.

Rationale for Resolution 2016.02.03.16

In response to a recommendation from the Board Governance Committee (BGC), the Board is taking action at this time to clarify the proposed implementation of public interest commitments for the .DOCTOR TLD (Top Level Domain). The .DOCTOR TLD (Top Level Domain) was included as one of the Category 1 strings (https://gacweb.icann.org/display/GACADV/2013-04-11-Safeguards-Categories-1) requiring additional safeguards in the Governmental Advisory Committee (Advisory Committee)'s (GAC (Governmental Advisory Committee)) Beijing Communiqué (https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2) [PDF, 156 KB] (11 April 2013). ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment period (23 April 2013) to solicit input on how the ICANN (Internet Corporation for Assigned Names and Numbers) Board New gTLD (generic Top Level Domain) Program Committee (NGPC) should address the GAC (Governmental Advisory Committee)'s safeguard advice in the Beijing Communiqué.

On 29 October 2013, the NGPC sent a letter (/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf) [PDF, 664 KB] to the GAC (Governmental Advisory Committee) about its proposed implementation of the Category 1 Safeguard advice in the Beijing Communiqué. The NGPC proposed to modify the text of the Category 1 Safeguards as appropriate to meet the spirit and intent of the advice in a manner that allowed the requirements to be implemented as Public Interest Commitments (PICs) in Specification 11 of the New gTLD (generic Top Level Domain) Registry Agreement. The NGPC also proposed to distinguish the list of strings between those that the NGPC considered to be associated with market sectors or industries that have highly-regulated entry requirements in multiple jurisdictions, and those that do not. The Category 1 Safeguards in the PIC would apply to the TLDs based on how the TLD (Top Level Domain) string was categorized (i.e. the highly-regulated TLDs would have eight additional PICs, and the others would have three additional PICs). In the NGPC's October 2013 proposal, .DOCTOR was not proposed to be classified as "highly-regulated".

In the GAC (Governmental Advisory Committee)'s Buenos Aires Communiqué (https://gacweb.icann.org/download/attachments/33849634/FINAL_Buenos_Aires_GAC_Communiqu version=1&modificationDate=1390438464000&api=v2) [PDF, 97 KB] (20 November 2013), the GAC (Governmental Advisory Committee) advised (https://gacweb.icann.org/display/GACADV/2013-11-20-Cat1-Cat2) the Board "to re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors, therefore ascribing these domains exclusively to legitimate medical practitioners. The GAC (Governmental Advisory Committee) notes the strong implications for consumer protection and consumer trust, and the need for proper medical ethical standards, demanded by the medical field online to be fully respected." The NGPC considered the GAC (Governmental Advisory Committee)'s Buenos Aires advice, and in the iteration of the Scorecard from 5 February 2014 (https://gacweb.icann.org/download/attachments/33849634/resolutions-new-gtld-annex-1-05feb14-en.pdf?version=1&modificationDate=1392335353000&api=v2) [PDF, 371 KB], the NGPC (1) adopted the proposed implementation (/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf) [PDF, 61 KB] of Category 1 Safeguards that was sent to the GAC (Governmental Advisory Committee) in October 2013; and (2) accepted the GAC (Governmental Advisory Committee)'s Buenos Aires advice to "re-categorize the string .doctor as falling within Category 1 safeguard advice addressing highly regulated sectors and ensure that the domains in the .doctor TLD (Top Level Domain) are ascribed exclusively to legitimate medical practitioners."

One of the contending applicants for the .DOCTOR TLD (Top Level Domain) raised some concerns in Reconsideration Request 15-3 (/resources/pages/reconsideration-15-3-brice-trail-llc-2015-03-12-en) about the proposed implementation of the GAC (Governmental Advisory Committee)'s advice and with respect to what Public Interest Commitments will be required in the .DOCTOR Registry Agreement. At its 6 May 2015 meeting, the Board Governance Committee began discussions about Reconsideration Request 15-3, and postponed making a final determination on the Reconsideration Request. The BGC recommended that "the NGPC again review the proposed implementation of a public interest commitment for the .DOCTOR TLD (Top Level Domain), and to re-evaluate the NGPC's 12 February 2015 determination." The NGPC has since been decommissioned and the Board continues to maintain general oversight and governance over the New gTLD (generic Top Level Domain) Program and provide strategic and substantive guidance on New gTLD (generic Top Level Domain)-related topics as the current round of the Program comes to a conclusion.

With this action, the Board clarifies that to implement the GAC (Governmental Advisory Committee) advice that the NGPC accepted in February 2014, the following eight Category 1 Safeguards should be included in the .DOCTOR Registry Agreement:

1. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registra ion Agreements a provision requiring registrants to comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.

2. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars at the time of registration to notify registrants of the requirement to comply with all applicable laws.

3. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registra ion Agreements a provision requiring that registrants who collect and maintain sensitive health and financial data implement

> reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.

4. Registry Operators will proactively create a clear pathway for the creation of a working relationship with the relevant regulatory or industry self-regulatory bodies by publicizing a point of contact and inviting such bodies to establish a channel of communication, including for the purpose of facilitating the development of a strategy to mitigate the risks of fraudulent and other illegal activities.

5. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registra ion Agreements a provision requiring registrants to provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

6. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registra ion Agreements a provision requiring a representation that the registrant possesses any necessary authorizations, charters, licenses and/or other related credentials for participa ion in the sector associated with the TLD (Top Level Domain).

7. If a Registry Operator receives a complaint expressing doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents regarding the authenticity.

8. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registra ion Agreements a provision requiring registrants to report any material changes to the validity of the registrants' authorizations, charters, licenses and/or other related credentials for participa ion in the sector associated with the TLD (Top Level Domain) in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

By clarifying the implementation details of the NGPC's 5 February 2014 action, the Board notes that other potential registrants of .DOCTOR domains – such as professors, doctors of law and those who perform repairs or have "doctor" in their business name (e.g., "Shoe Doctor," "Computer Doctor") would not be limited by the PICs from being able to register names in the TLDs. Additionally, directories, review sites, commentators and services that provide information about medical and other types of doctors could be permitted. In clarifying the implementation details of the NGPC's 5 February 2014 action, the Board notes that it considered a review of a sample of regulatory schemes in multiple jurisdictions to determine whether the term "doctor" is associated with market sectors that have clear and/or regulated entry requirements in multiple jurisdictions, or is strongly associated with a highly-regulated industry in multiple jurisdictions. The review indicates that the term "doctor" is associated with medical practitioners in many countries, and in this context, has highly-regulated entry requirements (e.g. Kenya Medical Practitioners and Dentists Act, the German Approbationsordnung für Ärzte (Regulation of the Licensing of Doctors), and the Medical Board of Australia). The term "doctor" in various jurisdictions around the world also applies to persons who have earned doctoral degrees. In this context, the term "doctor" is also associated with clear and/or regulated entry requirements in multiple jurisdictions for obtaining such degrees (e.g. Doctor of Philosophy (PhD), Doctor of Education (EdD) and Doctor of Psychology (PsyD)). The review also shows that the term "doctor" is used in a general sense to refer to a person having expertise in a particular field without reference to formalized licensing requirements as noted above by the examples "Shoe Doctor," "Computer Doctor".

It should be noted, however, that a registry operator may impose additional registration restrictions that may otherwise limit eligible registrants in the TLD (Top Level Domain). For example, the registry operator may impose registration restrictions that require potential registrants to validate their credentials as licensed medical practitioners in order to register a name in the TLD (Top Level Domain). Imposing such a restriction would be at the discretion of the registry operator.

In adopting its response to the BGC recommendation, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- GAC (Governmental Advisory Committee) Beijing Communiqué (https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB] (April 2013); GAC

(Governmental Advisory Committee) Durban Communiqué (https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_ version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB] (July 2013); GAC (Governmental Advisory Committee) Buenos Aires Communiqué (https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Comm version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB] (November 2013); GAC (Governmental Advisory Committee) Singapore Communiqué (https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Sin 5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2) [PDF, 147 KB] (as amended) (March 2014); GAC (Governmental Advisory Committee) London Communiqué (https://gacweb.icann.org/download/attachments/27132037/Communique%20London% 20final.pdf?version=1&modificationDate=1406852169128&api=v2) [PDF, 138 KB] (June 2014); GAC (Governmental Advisory Committee) Los Angeles Communiqué (/en/system/files/correspondence/gac-to-board-15oct14-en.pdf) [PDF, 127 KB] (October 2014); GAC (Governmental Advisory Committee) Singapore Communiqué (/en/system/files/correspondence/gac-to-board-11feb15-en.pdf) [PDF, 113 KB] (February 2015); GAC (Governmental Advisory Committee) Buenos Aires Communiqué (https://gacweb.icann.org/download/attachments/27132037/GAC%20Buenos%20Aires% 2053%20Communique.pdf?version=1&modificationDate=1435188375963&api=v2) [PDF, 106 KB] (June 2015)

- Applicant responses to GAC (Governmental Advisory Committee) advice: http://newgtlds.icann.org/en/applicants/gac-advice/ (http://newgtlds.icann.org/en/applicants/gac-advice/)

- Applicant Guidebook, Module 3: http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf (http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf) [PDF, 260 KB]

- Reconsideration Request 15-3 (/resources/pages/reconsideration-15-3-brice-trail-llc-2015-03-12-en)

- Other correspondence related to implementation of the Category 1 Safeguard Advice from the GAC (Governmental Advisory Committee)

The adoption of the Board's resolution will have a positive impact on the community because it will provide greater clarity to the GAC (Governmental Advisory Committee), the applicants and the community about the implementation of the Public Interest Commitments applicable to the .DOCTOR TLD (Top Level Domain). This clarification will also allow the contending applicants for the .DOCTOR TLD (Top Level Domain) to move forward with resolving the contention set.

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

This is an Organizational Administrative function that does not require public comment.

g. Establishing a Set of KPIs for Board Performance and Improvement Efforts (ATRT2 Rec. 1, 2 & 3)

Whereas, on 26 June 2014, the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepted the recommendations of the Final Report of the Second Accountability and Transparency Review Team (ATRT2) published on 31 December 2013.

Whereas, ATRT2 Recommendation 1 stated "The Board should develop objective measures for determining the quality of ICANN (Internet Corporation for Assigned Names and Numbers) Board members and the success of Board improvement efforts, and analyze those findings over time."

Whereas, ATRT2 Recommendation 2 stated "The Board should develop metrics to measure the effectiveness of the Board's functioning and improvement efforts, and publish the materials used for training to gauge levels of improvement."

Whereas, ATRT2 Recommendation 3 stated "The Board should conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time and should regularly assess Directors' compensation levels against prevailing standards."

Whereas, the Board Governance Committee (BGC) considered ATRT2 Recommendations and provided the Board with recommendations on implementation, including among other things the development of Key Performance Indicators (KPIs) to help measure the Board's function and improvement efforts.

Whereas, the Board recognizes the importance of measuring how well the Board functions, including its logistical aspects, and of measuring the Board's improvement efforts.

Whereas, the Board is engaged, through the BGC, in an ongoing process to review the Board's working practices and develop comprehensive and holistic KPIs and other relevant metrics with which the Board can measure its effectiveness and improvement over time.

Whereas, the BGC has recommended that the Board accept a first set of KPIs specifically in response to the ATRT2 recommendations, with the understanding that additional and more comprehensive KPIs will continue being developed and modified over time as part of the BGC and the Board's standard operating procedures and activities.

Resolved (2016.02.03.17), the Board approves the KPIs set forth in Attachment 1 to the Reference Materials, and agrees with the BGC that the Board should continue to develop of more comprehensive, richer set of KPIs and other relevant metrics with which the Board can measure its effectiveness and improvement over time.

Resolved (2016.02.03.18), with respect to the portion of ATRT2 Recommendation 3 recommending that the Board "conduct qualitative/quantitative studies to determine how the qualifications of Board candidate pools change over time", the Board will undertake to commence discussions with the Nominating Committee and electing bodies that are responsible for the selection of Directors and that have access to the qualifications of candidate pools.

Rationale for Resolutions 2016.02.03.17 – 2016.02.03.18

The implementation of recommendations (/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf) [PDF, 3.46 MB] from the Second Accountability and Transparency Review Team (ATRT2) began in June 2014, shortly after the Board accepted the recommendations. The initial Implementation Plan scheduled the completion of Recommendations 1, 2 and 3 in June 2015, which was later revised to February 2016, to allow Board Governance Committee (BGC) to further discuss the overall process, including the development of Key Performance Indicators (KPIs) to help measure the efforts called for in ATRT2 Recommendations 1, 2 and 3.

The BCG is working with the Board to review comprehensively the Board's performance and improvement efforts and to develop relevant and substantive KPIs to measure both. The first set of KPIs (see Attachment A to the Reference Materials) that the Board has approved today was developed directly in response to the ATRT2 recommendations. However, the Board is dedicated to pursuing the development of even more meaningful KPIs as an ongoing effort to help improve the metrics by which the Board measures its performance overtime. Accordingly, the Board now considers this effort as part of its ongoing activities to help enhance its performance, which the BGC is tasked with in Section I.A of its charter (see https://www.icann.org/resources/pages/charter-06-2012-02-25-en (/resources/pages/charter-06-2012-02-25-en)).

With respect to ATRT 2 Recommendation 1, the Board has previously stated that it is difficult to determine the quality of individual Board members as this terminology could be interpreted in many different ways. In accepting this recommendation, the Board agreed to measure its improvement efforts (training programs) over time, which is what the first approved KPIs address.

With respect to ATRT 2 Recommendation 2, which is partly redundant to Recommendation 1, the proposed first KPIs measure the Board's current logistical functioning.

With respect to ATRT 2 Recommendation 3, the Board has previously indicated that it does not have access to the information related to the Board candidate pools, and in particular as it relates to the Nominating Committee candidates, that would allow for assessment or measurement by the Board of Board candidate qualifications. Accordingly, the Board will undertake to commence discussions with the Nominating Committee and the electing bodies that are responsible for the selection of Directors and that have access to the qualifications of candidate pools.

Adopting this initial set of KPIs will have no direct fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) or the community that is not already budgeted, and will not have an impact of the security, stability and resiliency of the domain name system.

This is an Organization Administrative Function that does not require public comment.

h. USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding

Whereas, on 25 June 2015, the Board approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US$7 million for the USG IANA (Internet Assigned Numbers Authority) Stewardship Transition Project (the Project) to be funded by the Reserve Fund.

Whereas, that budget envelope was fully utilized during the first five months of FY16, including a US$4 million cost of external legal advice (as referred to at https://www.icann.org/resources/pages/iana-stewardship-project-costs-2015-10-16-en (/resources/pages/iana-stewardship-project-costs-2015-10-16-en)) during that five-month period.

Whereas, it is projected that the cost to complete the Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability's (CCWG) Work Stream 1 recommendation development work and, to carry out the implementation work (including bylaws drafting) during the remaining seven months of FY16 to be US$8 to 9 million, including US$3.5 million for additional external legal advice.

Whereas, the Board Finance Committee (BFC), the co-chairs of the CCWG and the Cross-Community Working Group to Develop an IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal on Naming Related Functions (CWG) met on 28 January 2016 to address this escalating cost issue.

Whereas, the BFC recommended the following three actions: (a) the CFO to work with the CCWG and CWG co-chairs to review and confirm the estimates for the remainder of FY16; (b) ICANN (Internet Corporation for Assigned Names and Numbers) to facilitate a discussion on how to establish proper budgetary estimates and cost control mechanisms for the next phase of Cross Community Work in FY16 (Implementation including Bylaws Drafting), to take place between the CCWG and CWG co-chairs and the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Chairs/Chartering Organizations; (c) the ICANN (Internet Corporation for Assigned Names and Numbers) Board should initiate a community discussion on how to replenish the Reserve Fund.

Whereas, the Board Finance Committee met on 2 February 2016 to follow up on the actions agreed during the call on 28 January 2016, and determined as an interim measure to recommend to the Board to approve an expenditure of US$4.5 million to cover the current estimate of costs of the Project from December 2015 until the end of the ICANN (Internet Corporation for Assigned Names and Numbers) 55 meeting in Marrakech, and that cost would be funded from the Reserve Fund.

Whereas the Board reiterates on its 25 June 2015 statement that the Board is "committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN (Internet Corporation for Assigned Names and Numbers) by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged." (*See* https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c (/resources/board-material/resolutions-2015-06-25-en#2.c).)

Resolved (2016.02.03.19), the Board approves a budget envelope of up to US$4.5 million, as an interim measure, to cover the costs of the Project incurred from December 2015 to the end of the ICANN55 in Marrakech (in addition to the budgeted envelope of US$7 million included in the already approved FY16 Operating Plan and Budget) to be funded through a fund release from the Reserve Fund.

Rationale for Resolution 2016.02.03.19

The USG IANA (Internet Assigned Numbers Authority) Stewardship Transition is a major initiative to which the ICANN (Internet Corporation for Assigned Names and Numbers) Community as a whole is dedicating a significant amount of time and resources. ICANN (Internet Corporation for Assigned Names and Numbers)'s support for the community's work towards a successful completion of the Project (including both the USG IANA (Internet Assigned Numbers Authority) Stewardship transition proposal development and the CCWG's work) is critical for ICANN (Internet Corporation for Assigned Names and Numbers).

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans and Budgets, it included the anticipated funding of the transition initiative costs through a corresponding withdrawal from the Reserve Fund.

ICANN (Internet Corporation for Assigned Names and Numbers) is not able to unilaterally decide to fund these expenses through the New gTLD (generic Top Level Domain) auction proceeds, or potential excess from New gTLD (generic Top Level Domain) application fees, as the Board has committed in the past to organize community consultation on the future use of these funds.

The costs on the USG Stewardship Transition Initiative incurred through the first five months of FY16 totaled US$7 million, an amount equal to the total envelope budgeted for the entire of FY16. Furthermore, the expenses projected for the remaining seven months of FY16 are estimated at US$8 to US$9 million, including US$3.5 million in external legal advice expenses.

Considering the strategic importance for this initiative to be successfully completed, the Board needs to approve additional expense envelopes for FY16 and identify the funding source.

Based on the extracts from Section 4 of the Charters of the CCWG and CWG, the Board acknowledges that the CCWG and CWG, through their co-chairs, are responsible for defining and requesting staff support, meeting support, experts and facilitators. The CCWG and CWG co-chairs are also responsible for defining and requesting additional advisors or experts and, doing so by providing ICANN (Internet Corporation for Assigned Names and Numbers) with rationale and expected costs.

The CCWG Charter states:

> The ICANN (Internet Corporation for Assigned Names and Numbers) Staff assigned to the CCWGAccountability will fully support the work of the CCWGAccountability as requested by the co-chairs, including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate by the CCWG-Accountability. ICANN (Internet Corporation for Assigned Names and Numbers) will provide access to relevant experts and professional facilitators as requested by the CCWGAccountability Chairs.

The CWG charter contains the same statement as above.

The CCWG Charter continues

> […] the CCWG-Accountability may also identify additional advisors or experts to contribute to its deliberations […]. Should additional costs be involved in obtaining input from additional advisors or experts, prior approval must be obtained from ICANN (Internet Corporation for Assigned Names and Numbers). Such a request for approval should at a minimum include the rationale for selecting additional advisors or experts as well as expected costs.

The CWG Charter reads:

> The chairs of this charter's drafting team, Jonathan Robinson and Byron Holland, will write to ICANN (Internet Corporation for Assigned Names and Numbers) seeking reasonable travel resources for CWG members to participate in face-to-face CWG meetings, but on the understanding that the CWG will make every effort to hold any face-to-face meetings concurrent, or in conjunction with regularly scheduled ICANN (Internet Corporation for Assigned Names and Numbers) meetings.

As a result, the BFC recommended to the CCWG and CWG co-chairs the following three actions: (a) the CFO to work with the CCWG and CWG co-chairs to review and confirm he estimates for the remainder of FY16; (b) ICANN (Internet Corporation for Assigned Names and Numbers) to facilitate a discussion on how to establish proper budgetary estimates and cost control mechanisms for the next phase of Cross Community Work in FY16 (Implementation including Bylaws drafting), to take place between the CCWG and CWG co-chairs and the SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Chairs/Chartering Organizations; (c) the ICANN (Internet Corporation for

Assigned Names and Numbers) Board should initiate a community discussion on how to replenish the Reserve Fund.

The above requests are consistent with previous communication issued by ICANN (Internet Corporation for Assigned Names and Numbers)'s CFO:

- to the CCWG co-chairs on 14 October 2015 through a letter on the ICANN (Internet Corporation for Assigned Names and Numbers) website (*see* https://community.icann.org/display/acctcrosscomm/Costs+of+independent+legal+advice (https://community.icann.org/display/acctcrosscomm/Costs+of+independent+legal+advice)) requesting the co-chairs to provide estimates for external legal advice.

- to the CWG and CCWG co-chairs, an email dated 30 November 2015, providing actual costs incurred by the four-month period ending 31 October 2015 and requesting to provide the ICANN (Internet Corporation for Assigned Names and Numbers) CFO with cost estimates for the external legal advice expected to be incurred from 31 October 2015 until 30 June 2016.

In addition, as the amount of expenses incurred for this initiative totals an estimated US$24.7 million for FY15 and FY16, it is expected that the Reserve Fund balance will be approximately reduced to US$60 million, corresponding to approximately 6 to 7 months of Operating Expenses, well below its current target level of 12 months of Operating Expenses or approximately US$113 million. As a result, the Board will initiate a process to identify a solution to replenish the Reserve Fund by the estimated amount of US$24.7 million (or its actual amount once known). The ICANN (Internet Corporation for Assigned Names and Numbers) Board plans to initiate a community discussion on how to replenish the Reserve Fund.

The Board expects that as the community groups continue to incur costs for the initiative, they will perform cost management exercises. Guidelines will be developed on cost management practices.

This action will not have a direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

3. Execut ve Sess on – CONFIDENTIAL

a. Pres dent and CEO FY16 SR1 At-R sk Compensat on

Whereas, each Board member has confirmed that he/she does not have a conflict of interest with respect to establishing the amount of payment for the President and CEO's FY16 SR1 at-risk compensation payment.

Whereas, the Compensation Committee recommended that the Board approve payment to the President and CEO for his FY16 SR1 at-risk compensation.

Resolved (2016.02.03.20), the Board hereby approves a payment to the President and CEO for his FY16 SR1 at-risk compensation component.

Rationale for Resolution 2016.02.03.20

When the President and CEO was hired, he was offered a base salary, plus an at-risk component of his compensation package. This same structure exists today. Consistent with all ICANN (Internet Corporation for Assigned Names and Numbers) staff members, the President and CEO is to be evaluated against specific goals, which the President and CEO has set in coordination with the Compensation Committee.

Following FY16 SR1, which is a scoring period that ran from 16 May 2015 through 15 November 2015, the President and CEO provided to the Compensation Committee his self-assessment of his achievements towards his goals for FY16 SR1 the measurement period. After seeking input from other Board members, the Compensation Committee reviewed with the President and CEO his FY16 SR1 goals and discussed his achievements against those goals. Following that discussion, the Compensation Committee recommended that the Board approve the President and CEO's at-risk compensation for the first scoring period of FY16 and the Board agrees with that recommendation.

While this will have a fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers), it is an impact that was contemplated in the FY16 budget. This decision will not have an impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

[Published on 5 February 2016]

b. Election of Göran Marby as ICANN (Internet Corporation for Assigned Names and Numbers)'s President and CEO (Published on 11 February 2016)

Whereas, Fadi Chehadé will step down as President and Chief Executive Officer (CEO) of ICANN (Internet Corporation for Assigned Names and Numbers) on 15 March 2016.

Whereas, in order to conduct a search for a new President and CEO, the Board established a CEO Search Committee consisting of eight Board members.

Whereas, a description of the position of the ICANN (Internet Corporation for Assigned Names and Numbers) President and CEO was posted on the ICANN (Internet Corporation for Assigned Names and Numbers) website at http://www.icann.org/en/groups/other/ceo-search (/en/groups/other/ceo-search).

Whereas, the CEO Search Committee engaged Odgers Berndtson, an international executive search firm, to identify candidates for the President and CEO position.

Whereas, the executive search firm conducted a detailed, thorough, global and international search for a CEO candidate, and identified numerous candidates for the CEO Search Committee to consider.

Whereas, the CEO Search Committee carefully considered the qualifications of all identified candidates and chose a number to interview at length.

Whereas, approximately 115 candidate resumes were received, 16 candidates were chosen for further evaluation by the CEO Search Committee, eight candidates were interviewed in face-to-face meetings by the CEO Search Committee, and four candidates were interviewed in face-to-face meetings by the full Board.

Whereas, after lengthy interviews and deliberations, the Board identified Göran Marby as the leading candidate for the President and CEO position.

Whereas, the Board finds that Göran Marby possesses the leadership, political, technical and management skills necessary to lead ICANN (Internet Corporation for Assigned Names and Numbers) as President and CEO.

Whereas, the CEO Search Committee has recommended that Göran Marby be elected President and CEO and the Compensation Committee has recommended a reasonable compensation package for Göran Marby.

Whereas, Göran Marby will not be able to begin his full time position with ICANN (Internet Corporation for Assigned Names and Numbers) as President and CEO for several weeks following Fadi Chehadé's final date of employment.

Whereas, the Board has determined that Akram Atallah should be appointed President and CEO for the time period of 16 March 2016 and until Göran Marby is able to begin his full time position with ICANN (Internet Corporation for Assigned Names and Numbers) as President and CEO.

Resolved (2016.02.03.21), beginning on 16 March 2016 and until Göran Marby is able to begin his full time position with ICANN (Internet Corporation for Assigned Names and Numbers) as President and CEO, Akram Atallah shall serve as President and CEO at the pleasure of the Board and in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, and shall hold this office until his resignation, removal, or other disqualification from service, or until his successor shall be elected and qualified.

Resolved (2016.02.03.22), beginning on the date that Göran Marby is able to begin his full time position with ICANN (Internet Corporation for Assigned Names and Numbers) as President and CEO, and contingent upon the execution of a formal written Agreement based on terms that have been approved by the Board, Göran Marby is elected as President and CEO, to serve at

the pleasure of the Board and in accordance with the ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, and shall hold this office until his resignation, removal, or other disqualification from service, including termination of his Agreement, or until his successor shall be elected and qualified.

Resolved (2016.02.03.23), ICANN (Internet Corporation for Assigned Names and Numbers)'s Board Chair and its General Counsel are authorized to finalize a formal written Agreement with Göran Marby, and ICANN (Internet Corporation for Assigned Names and Numbers)'s Board Chair is authorized to execute that Agreement on behalf of ICANN (Internet Corporation for Assigned Names and Numbers).

Resolved (2016.02.03.24), the Board wishes to thank Odgers Berndtson for its assistance with the CEO search process.

Resolved (2016.02.03.25), this resolution shall remain confidential as an "action relating to personnel or employment matters", pursuant to Article III, section 5.2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, pending public announcement of the selection of the new President and CEO.

[Published on 11 February 2016]

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[1] Article IV, Section 2 of the .CAT, .TRAVEL, and .PRO registry agreements provide that the agreements shall be renewed upon the expiration of the initial term for successive terms, unless the following has occurred:

i. an arbitrator or court has determined that Registry has been in fundamental and material breach of Registry's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 despite notice and an opportunity to cure in accordance with Article VI hereof and (ii) following the final decision of such arbitrator or court, Registry has failed to correct the conduct found to constitute such breach.…

.CAT Registry Agreement, *available at* https://www.icann.org/resources/unthemed-pages/cat-agreement-2005-09-23-en (/resources/unthemed-pages/cat-agreement-2005-09-23-en); .TRAVEL Registry Agreement, *available at* https://www.icann.org/resources/unthemed-pages/travel-agreement-2006-04-12-en (/resources/unthemed-pages/travel-agreement-2006-04-12-en); .PRO Registry Agreement, *available at* https://www.icann.org/resources/unthemed-pages/pro-agreement-2010-04-22-en (/resources/unthemed-pages/pro-agreement-2010-04-22-en).

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Board (/resources/pages/board-of-directors-2014-03-19-en)

President's Corner (/presidents-corner)

Staff (/en/about/staff)

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

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Registry Liaison (/resources/pages/contact-f2-2012-02-25-en)

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RFPs (/en/news/rfps)

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Dispute Resolution (/en/help/dispute-resolution)

Domain Name Dispute Resolution (/en/help/dndr)

Name Collision (/en/help/name-collision)

Registrar Problems (/en/news/announcements/announcement-06mar07-en.htm)

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